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URGENT DEFICIENCY APPROPRIATION BILL

HEARINGS

BEFORE THE

121/147

SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS UNITED STATES SENATE

SIXTY-THIRD CONGRESS
FIRST SESSION

ON

H. R. 7898

A BILL MAKING APPROPRIATIONS TO SUPPLY URGENT DEFICIENCIES IN APPROPRIATIONS FOR THE FISCAL YEAR 1913, AND FOR OTHER PURPOSES

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URGENT DEFICIENCY APPROPRIATION BILL.

MONDAY, SEPTEMBER 22, 1913.

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS.

The subcommittee met at 2 o'clock p. m.

Present: Senators Overman (acting chairman), Bryan, and Perkins.

STATEMENTS OF HON. WILLIAM G. M'ADOO, SECRETARY OF THE TREASURY, AND OSCAR WENDEROTH, SUPERVISING ARCHITECT OF THE TREASURY DEPARTMENT.

The ACTING CHAIRMAN (Senator Overman). The first item in the supplemental estimates, under the head of "Public buildings," is for the Bonne Terre (Mo.) post-office building, for commencement of building under present limits, $5,000. That estimate is withdrawn?

BONNE TERRE (MO.) POST-OFFICE BUILDING.

Mr. WENDEROTH. In this case the citizens donated the site, but would not pass title until they were assured that a building was to be erected on the site. They desired that money be appropriated on account, and so we estimated that amount. The last public building bill authorized a building on the site. After we had submitted this estimate for $5,000 the vendors of the site were content with the authorization and did not demand any actual appropriation. Inasmuch as the building is four or five years off we withdrew the estimate.

BRONX (N. Y.) POST-OFFICE BUILDING.

Senator OVERMAN. The next item is $60,000 for additional land for site for Bronx (N. Y.) post-office building, and that is in the bill.

CARROLLTON (GA.) POST-OFFICE BUILDING.

The next is an estimate of $7,500 for continuation of post-office building at Carrollton, Ga., which is out and a marginal note states that it can wait until the coming session of Congress.

Would you prefer to take up anything special to which you want to call our attention? Of course, it would take a great deal of time to go through these items.

Secretary McADOO. I was going to suggest, with your permission, that while I have gone over these items with the Supervising Architect it is not possible to keep all the details in mind and I have brought him here to explain the different items to you. I thought I might simply speak to the committee as to some of the items involved in my communication of September 16 and September 18.

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ESTIMATES FOR PUBLIC BUILDINGS.

Senator OVERMAN. I have here your communication of September 16.

Secretary McADOO. Then there is a communication addressed to the President of the Senate, under date of September 18, in relation to certain emergencies.

Senator OVERMAN. Then it went to the Committee on Public Buildings and Grounds, I suppose.

Mr. WENDEROTH. We supposed it would come to this committee.

Secretary McADOO. I have a copy of the letter.

(The letters referred to were subsequently ordered to be printed in the record of the hearing, and they are as follows:)

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, September 16, 1913.

CHAIRMAN COMMITTEE ON APPROPRIATIONS, *United States Senate.*

SIR: The department desires to invite your attention to House Document No. 213, Sixty-third Congress, first session, in which was submitted revised estimates of appropriations, together with recommendations for modifications in legislation in connection with public building work under the control of this department.

The department is of the opinion that a number of the items contained in the document referred to which were not reported in the bill making appropriations for urgent deficiencies (H. R. 7898) merit consideration at this time in behalf of the public interests. The bill referred to was received in the Senate on September 10, 1913, and was referred to the Committee on Appropriations.

A reference to Document No. 213 will show a reduction in the revised estimates for public building work, compared with the total originally submitted, as given, in House Document No. 88, Sixty-third Congress, first session, of $378,891. The deficiency bill H. R. 7898, as passed in the House of Representatives and referred to the Senate, makes a still further reduction of $412,880, as compared with the revised estimates.

It is feared that such large reductions will seriously affect the progress of public building work, and interfere materially with the proper prosecution of public business as related to several special projects which should receive attention at this time, as well as the development of facilities for the transaction of the parcel-post business, together with needed furniture equipment in public buildings, and particularly so at the new post-office building in New York, N. Y.

The items to which the department desires to invite particular attention in this connection are as follows:

BOSTON (MASS.) IMMIGRANT STATION.

It is desired in connection with this project, in addition to placing its control under this Department, to secure an increase in the limit of cost of $35,000, for reasons which are fully set forth not only in the revised estimates (H. Doc. No. 213), but also in Document No. 91, House, Sixty-third Congress, first session. In this latter document appears a tentative draft of legislation which it is recommended should be adopted, eliminating the provision for drafting and supervisory services ($17,000); also the reference to the immigrant fund; and modifying the figures so as to provide for an increase in the limit of $35,000 instead of $52,000, and fixing the total limit at $410,000 instead of $427,000.

No appropriation will be needed at this time under the proposed new limit, but the action recommended, if approved, will enable the department to proceed with the preparation of the necessary drawings and specifications and the placing of the work under contract.

HANOVER (PA.) POST OFFICE.

The appropriation asked for was provided in House bill 7898, but the provision for additional land, in order to enlarge the mail-wagon driveway, was omitted. It is recommended that the item as originally submitted in House Document No. 88, page 8, be adopted, in lieu of the item which now appears in the deficiency bill, page 3.

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NEW YORK (N. Y.) APPRAISERS' STORES.

As recommended in the revised estimates (H. Doc. No. 213, p. 9), and in view of the importance of immediately undertaking measures to increase fire protection in this building, the following paragraph, in the opinion of the department, should be inserted in the deficiency bill, to wit:

"The appropriation of $75,000 contained in the sundry civil act approved August twenty-fourth, nineteen hundred and twelve, for installing in the appraisers' stores building, New York, New York, certain metal conduits and wiring, fire-alarm system, and so forth, be, and the same is hereby, made available in lieu thereof, for the following purposes, viz:

"For completing the inclosing of the central elevator shaft, inclosing the lift in the northeast corner, new inclosed staircase on south side, remodeling wiring system, installing a new fire-alarm system, and extending watchman's clock system; any balance within said limit of $75,000 to be expended in reassigning space and necessary changes incident thereto."

NEW YORK (N. Y.) ASSAY OFFICE BUILDING.

In connection with this project, it is desired to secure a modification of existing legislation as a proviso of the deficiency bill. For this purpose it is recommended that the paragraph which originally appeared in the bill (No. 7898), pages 4 to 5, as reported to the House, but which was omitted before final passage, be restored to the deficiency bill, but modified so as to provide that the services of consulting engineers, other specially trained engineers, and draftsmen may be employed either within or outside the District of Columbia without regard to civil-service laws, rules, and regulations, and that the Secretary of the Treasury be authorized to make such disposition of the façade of the old building with a view to its subsequent preservation, as he may deem proper without expense to the United States other than razing the same. It will be observed that no additional appropriation is involved in the proposed modification of the legislation.

In Document No. 93, H. R., Sixty-third Congress, first session, appears a full explanation of the necessity for a change in existing legislation as related to this project.

NEW YORK (N. Y.) BARGE OFFICE.

An increase of $89,935 in the limit of cost for this project is found necessary in order to provide landing piers and slips for the Government ferry, boarding vessels, and revenue cutters. If this recommendation is approved, it will only be necessary at this time to actually reappropriate $39,935 on account, which action is recommended. This item is referred to on page 4 of Document No. 213, and also appears on page 10 of Document No. 88.

It is recommended that the paragraph in Document No. 88 be inserted in the deficiency bill, modified so as to provide for a reappropriation of $39,935 (unexpended balance of the appropriation for rental and moving expenses) for the continuation of the work, eliminating the reference to the sum of $50,000 as being appropriated, and fixing the total limit at $589,935.

NEW YORK (N. Y.) MARINE HOSPITAL.

It is recommended that the paragraph which appears under this caption on page 10 of Document No. 88 be inserted in the deficiency bill, as the amount asked for, $12,000, is necessary if the work is to be properly completed. The matter is urgent, and the amount estimated will be needed at once. Reference to this project is made in the revised estimates, on page 5 of Document No. 213.

PITTSBURGH (PA.) BUREAU OF MINES.

An appropriation of $15,000 was asked for in the revised estimates (Doc. No. 213, p. 3), but no action was taken thereon by the House of Representatives. It is respectfully urged that the paragraph under this caption, which appears on page 9 of Document No. 88, be provided for in the deficiency bill, and the sum of $15,000 therefor appropriated. This amount will be needed in order that work upon the drawings, etc., may be commenced at once. Further reference is made to this project in Document No. 213, page 3.

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PORTLAND (ME.) QUARANTINE STATION.

It is desired to increse the present limit of cost in the sum of $23,620, in order that the department may be enabled to provide adequate fireproof buildings. This action is strongly recommended. This project is referred to on page 10, Document No. 88, and also on page 5 of the revised estimates, Document No. 213. If the increased limit of cost is now authorized it will not be necessary at this time to appropriate any money on account thereof.

PORTLAND (OREG.) POST OFFICE.

In Document No. 88, page 9, an estimate was submitted in the sum of $10,000 for plans, estimates, and architectural services. In lieu of this item, it is recommended that the unexpended balance remaining from the acquisition of a site, in amount $160,000, be reappropriated and made available toward the construction of the building within the present limit and for the purposes stipulated in the public buildings act of March 4, 1913. This action would not result in creating an additional appropriation from the Treasury. Reference to this project is made in the revised estimates, Document No. 213, page 3.

WASHINGTON (D. C.) BUILDING, INTERIOR DEPARTMENT OFFICES.

On page 9 of Document No. 88 an appropriation was recommended of $25,000. In this connection it is recommended that the unexpended balance remaining from the acquisition of the site, in amount $96,506.20, be reappropriated and made available for the purposes, and within the limit named in the public buildings act of March 4, 1913, section 9. This would render unnecessary the direct appropriation from the Treasury of any money at this time. In Document No. 213, page 3, appear explanatory notes with reference to this project.

WASHINGTON (D. C.) NATIONAL ARCHIVES BUILDING.

It is recommended that the estimate ($5,000) which appears on page 9 of Document No. 88 be inserted in the deficiency bill, as without this provision it would be difficult to submit an intelligent recommendation to Congress to determine the required area of the site and the amount which should be authorized therefor. Reference is made to this project on page 3 of the revised estimates, Document No. 213.

WASHINGTON (D. C.) PATENT OFFICE BUILDING.

An appropriation of $5,000 was asked for to provide technical and engineering services in the Office of the Supervising Architect, under authority contained in the public buildings act of March 4, 1913, section 17. In the opinion of the department this amount should be provided in order that appropriate steps may be taken for the preparation of sketches and estimates preliminary to the submission of a report thereon to Congress. Reference is made to this project on page 3 of Document No. 213.

REPAIRS AND PRESERVATION OF PUBLIC BUILDINGS—MECHANICAL EQUIPMENT FOR PUBLIC BUILDINGS—VAULTS AND SAFES FOR PUBLIC BUILDINGS—FURNITURE AND REPAIRS OF FURNITURE.

The four preceding items have relation to appropriate provision for changes, alterations, equipment, etc., in public buildings incident to furnishing proper facilities for the accomplishment of the parcel-post business. The amounts asked for are indicated in Document No. 88, page 11, for each item. Provision for this work has been urged upon the department by the Postmaster General. It is recommended that the items and amounts as stated in Document No. 88 be incorporated in the deficiency bill. The necessity for these four items is clearly shown by the language which appears on pages 5 and 6 of Document No. 213.

FURNISHING NEW POST OFFICE, NEW YORK, N. Y.

This building is now practically completed, and could be occupied at the present time if furnished. The investment which it represents is useless unless the necessary furniture is provided. It is requested that the item which appears on page 12 of Document No. 88, in amount $200,000, be inserted in the deficiency bill. Appropriate explanations relative to this item appear in the document referred to, page 12, and also on page 6 of the revised estimates, Document No. 213.

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MECHANICAL EQUIPMENT FOR PUBLIC BUILDINGS, 1914.

The department recommends that the paragraph which appears on page 12 of Document No. 88 be enacted into law as a proviso of the deficiency bill. No appropriation is involved, and the action requested merely increases the limitation in said appropriation in order to provide for needed repairs to the mechanical equipment of the buildings referred to. A further explanation in connection with this item appears on page 6 of the revised estimates, Document No. 213.

GENERAL EXPENSES OF PUBLIC BUILDINGS, 1914.

The revised estimates (Document No. 213, p. 9) asked for the sum of $34,800. The deficiency bill, page 6, reports an appropriation of $30,000. It is recommended that the item under this caption which appears on page 9 of Document No. 213 be substituted for that which is in the deficiency bill, page 6, and it is particularly recommended that the limitation placed upon the amount of compensation which may be paid site agents, temporarily employed, be fixed at not to exceed the rate of $5,000 per annum instead of the rate which now appears in the deficiency bill.

SALARIES, OFFICE OF THE SUPERVISING ARCHITECT.

The necessity for some provision to meet the administrative requirements of existing legislation is clearly set forth on pages 7 and 9 of the revised estimates, Document No. 213. A very slight increase in the force of the office of the Supervising Architect would afford some relief to present congested conditions. It is respectfully recommended, therefore, that the paragraph under this caption which appears on page 9 of Document No. 213 be enacted into law as a proviso of the deficiency bill and that the amount named therein, $15,120 be appropriated.

The following is a summary of the items referred to herein involving amounts which, in the opinion of the department, should be provided for in the deficiency bill now before your committee:

New York, N. Y., marine hospital	$12,000
Pittsburgh, Pa., Bureau of Mines	15,000
Washington, D. C., National Archives Building	5,000
Washington, D. C., Patent Office Building	5,000
Repairs and preservation of public buildings	37,500
Mechanical equipment for public buildings	12,500
Valuts and safes for public buildings	5,000
Furniture and repairs of furniture	50,000
Furnishing new post office, New York, N. Y	200,000
General expenses of public buildings, 1914	4,800
Salaries, office of the Supervising Architect	15,120

Making in all a total of $361,920, which is a reduction in fact of $50,960 from the amount originally asked for in the revised estimates of Document No. 213.

The department would be pleased to submit any further explanation in connection with the foregoing items as the Committee on Appropriations of the Senate may deem necessary.

Respectfully,

W. G. McAdoo, *Secretary.*

Treasury Department,
Office of The Secretary,
Washington, September 18, 1913.

The Chairman Committee on Appropriations,
United States Senate.

Sir: This department has the honor to acknowledge the receipt, by reference from your committee, of a copy of the amendment (introduced Sept. 15, 1913) which Senator Sheppard will propose to the bill (H. R. 7898) making appropriations to supply urgent deficiencies in appropriations for the fiscal year 1913, etc. This amendment modifies existing legislation so as to make available under the revised authorization in the public building act of March 4, 1913, for certain public building work at Galveston, Tex., the appropriations made pursuant to the original authorization therefor contained in the public building act of June 25, 1910.

In response to the committee's request for a report, I have the honor to state that, in the opinion of this department, if the contemplated amendment is enacted into

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law, the department will be in position, without interfering with its present program, to undertake at once the acquisition of a site and building for an appraisers' stores, which must be done before any steps can be taken toward the remodeling of the old customhouse (present appraisers' stores) into a United States courthouse and the alterations in the post office and customhouse necessary to provide additional quarters for Federal officials at Galveston, Tex., as set forth in the public building act of March 4, 1913. These latter items will be taken up in their proper order. Until there is further legislation to make present appropriations applicable to the objects of the revised authorization, nothing can be done toward relieving the congested conditions in the Government buildings at Galveston.

Respectfully,

WM. G. MCADOO, *Secretary*.

SEPTEMBER 18, 1913.

The PRESIDENT OF THE SENATE,
United States Capitol.

SIR: I have the honor to submit herewith, for the consideration of Congress, estimates of appropriations relating to work in connection with public buildings, involving projects of a character which it would seem, in the interests of the public service, should receive attention at the present session, and to request that the same may be provided for in the deficiency bill now pending in the Senate:

BINGHAMTON (N. Y.) POST OFFICE AND COURTHOUSE.

For new roof, repairs, plastering, painting, gas piping, conduit and wiring, lighting fixtures, sash and frames, and miscellaneous and general repairs, including plumbing, to place the building in proper condition for the transaction of public business, rendered necessary through damage done by the fire of July 22, 1913, $30,000.

NOTE.—This building was seriously damaged by fire on July 22, 1913, communicated from a factory building situated about 70 feet south. The flames swept entirely across the building in the attic story, causing the slate roof to collapse. While the fire was confined almost entirely to the attic and roof, a great deal of damage resulted in the lower stories through water. The building in its present condition can not be occupied.

A careful and thorough examination of the damage done by the fire indicates that an entire new roof will be required, new dormers, new weather bureau platform and steps and pent house, together with the replacement of gas piping, conduit, and wiring and new plaster ceiling for the entire third floor and attic rooms. Miscellaneous and general repairs will also have to be made to wood finish and floors where damaged. A number of lighting fixtures will also have to be renewed.

A very close estimate of the amount required to place the building in proper condition for the transaction of public business is $30,000.

BINGHAMTON, N. Y., RENT OF BUILDING.

For rent of temporary quarters for the accommodation of Government officials pending the repair of the damage done by fire to the post office and courthouse building, Binghamton, N. Y., including moving expenses, $10,000.

NOTE.—Pending the repair and restoration of the building temporary quarters will have to be provided for the officials, and it is believed that the sum of $10,000 will be sufficient for this purpose.

GALVESTON (TEX.) APPRAISERS' STORES.

The appropriations of $40,000 (act of Congress approved Mar. 4, 1911, 36 Stat., 1372) and $25,000 (act of Congress approved Aug. 24, 1912, 37 Stat., 420) for the enlargement, extension, remodeling, or improvement of the appraisers' stores building at Galveston, Tex., under the authorization contained in section 2 of the act of Congress approved June 25, 1910 (36 Stat., 680) are hereby reappropriated and made available for carrying into effect so much of the revised authorization contained in section 1 of the act of Congress approved March 4, 1913, as provides for the purchase of a suitable building and site for an appraisers' stores, warehouse, and other purposes, and providing suitable offices therein, at a limit of cost of $65,000; and any balance remaining of said $65,000 from said purchase and provision of suitable offices is hereby reappropriated and made available toward carrying into effect either, or both, of the other two purposes contemplated by said authorization contained in section 1 of said public act of March 4, 1913.

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NOTE.—Under the provisions of the public building act of March 4, 1913, the amount heretofore appropriated on account of the appraisers' stores at Galveston, Tex., in amount $65,000, was made available, together with an additional sum, for three distinct projects at that point, instead of the one previously authorized. The comptroller has decided that the language of the act referred to does not make an appropriation, and hence further action by Congress is necessary. The reappropriation of the amount previously allowed will not result in creating an additional appropriation from the Treasury.

The attention of the committee has already been invited to this matter through a proposed amendment to the deficiency bill (H. R. 7898) presented in the Senate by Senator Sheppard and referred to the Committee on Appropriations September 15, 1913, which proposed amendment was referred to this department and response thereto made September 17, 1913, addressed to the Chairman of the Committee on Appropriations of the Senate.

GALVESTON (TEX.) QUARANTINE STATION.

For placing riprap alongside the bulkhead at the quarantine station, Galveston, Tex., in order to prevent the same from being washed away due to its exposed position and the effect of storm and wave action and the scour of tidal currents, $50,000.

NOTE.—This station is in the most exposed position of any of the Government works in this vicinity. It is not only exposed to storm and wave action, but the contemplated improvements in the harbor will also expose it in a very great degree to the action of the tidal currents. A bulkhead has been constructed which affords some protection to the buildings at the station, but this is entirely inadequate for the purpose of full protection from the action of the sea and the tidal currents.

As a precaution against possible disaster from the elements it will be necessary to place riprap alongside of the bulkhead to prevent the possibility of the latter, when exposed to storm and wave action, from being washed away. To do this work it is estimated that the sum of $50,000 will be required, and in view of the improvements now going on in the harbor it will be necessary that the work in connection with the bulkhead be done at once if possible disaster to the station and its buildings is to be avoided in the future.

TAMPA BAY (FLA.) QUARANTINE STATION.

For the construction of attendants' quarters on shore, wharf, and causeway, including disinfecting house thereon, and a house on shore for the storage of inflammable materials, to replace the damage done by the fire of June 18, 1913, $65,000.

NOTE.—The disinfecting wharf, with connecting causeway with the shore, together with a house on said wharf used for storage and disinfecting purposes and for accommodations for the attendants attached to the station, was totally destroyed on June 18, 1913, by fire, the cause of which is unknown. At the time of the fire one of the attendants were severely burned and a large quantity of stores, materials, etc., were completely destroyed.

In the reconstruction of this wharf, etc., with a view to avoiding the risk of life inuring under such conditions as have existed heretofore, it is the intention of the department to restore the wharf and causeway, to erect thereon a house for disinfecting purposes, tanks, etc., but to provide quarters for the attendants on shore, together with a small concrete building in an isolated position for the storage of inflammable liquids.

In arriving at the amount of the estimate, the isolated situation of the station and its distance from the base of supplies—the port of Tampa being 36 miles from the station—has been given consideration. Consideration has also been given to the fact that on this coast there are no closed ports and that everything is open to the elements. Under such conditions the price of both labor and materials will probably be greater than would be the case at a station where the conditions referred to do not exist. The amount of the estimate, in view of all the circumstances, is deemed reasonable and should be provided for if proper quarantine facilities at Tampa Bay are to be maintained.

REPAIRS AND PRESERVATION OF PUBLIC BUILDINGS, 1914.

The allotment for the Treasury, Butler, and Winder Buildings under this caption, for the fiscal year ending June 30, 1914, is hereby increased from $12,000 to $18,000, in order to make suitable repairs to said buildings resulting from the storms of July 30 and August 3, 1913.

NOTE.—It is desired that the allotment for the Treasury, Butler, and Winder Buildings, under this caption, for the current fiscal year, should be increased from $12,000 to

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$18,000, in order that due provision may be made for absolutely necessary repairs to said buildings resulting from the storms of July 30 and August 3, 1913. This action will not involve the creation of any additional appropriation from the Treasury.

The following is a summary of the items for which appropriations are deemed necessary, the first three covering restorations, due to the ravages of fire, and the fourth item embracing a necessary precaution against possible disaster from the elements:

Binghamton, N. Y., post office and courthouse	$30,000
Binghamton, N. Y., temporary quarters	10,000
Tampa Bay, Fla., quarantine station	65,000
Galveston, Tex., quarantine station	50,000
Making a total of	155,000

The remaining two items embraced in this communication involve, respectively, a reappropriation of moneys heretofore allowed and an increase in an allotment. Neither of these items creates an additional appropriation from the Treasury.

The department would be pleased to submit such further explanations in connection with the foregoing items as the Committee on Appropriations of the Senate might deem necessary.

Respectfully, W. G. McAdoo, *Secretary*.

PUBLIC BUILDING AT BINGHAMTON, N. Y.

Secretary McAdoo. I should like to say that there are certain buildings which have been injured by fire, tide, and storm since our original estimate came in, among others the post office and courthouse building at Binghamton, N. Y., and it is imperative that an appropriation be made promptly to repair that building and also an appropriation for the rental of a building at Binghamton until they get the new structure ready.

QUARANTINE STATION AT TAMPA BAY, FLA.

At Tampa Bay, Fla., quarantine station, we have a similar situation where, as a result of fire, we have also to make necessary repairs. These ought to be made promptly and they involve an expenditure of $65,000. At Galveston, Tex., the appraisers' stores——

Mr. Wenderoth. The legislation is involved and we desire to straighten out.

Senator Overman. How do you arrive at that estimate of $65,000?

Secretary McAdoo. I will ask Mr. Wenderoth to give you the details.

Mr. Wenderoth. In the Tampa Bay instance the Public Health Service, which directs the work of the quarantine station, made an estimate which we believed was too low. We have a superintendent of construction located at Miami, Fla. We telegraphed him to go immediately to Tampa Bay, review the entire situation, and estimate it very carefully. It is a part of the duty of a superintendent of construction to know the cost of building materials and be able to estimate the cost of building construction. He gave us this estimate.

Senator Overman. Was the building absolutely destroyed?

Mr. Wenderoth. Yes, sir.

Senator Overman. What was the cost of the original building?

Mr. Wenderoth. I think the estimate we have submitted is about the same as the original cost of the whole station. Conditions have changed and prices have changed. We can not make any comparisons with the original cost.

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Senator OVERMAN. Is it to be built of stone?

Mr. WENDEROTH. No; it is a concrete building—a fireproof building. All the older quarantine stations are merely wooden structures.

Senator OVERMAN. The Government owns the site, I suppose?

Mr. WENDEROTH. Oh, yes, sir.

Senator OVERMAN. Is it used as an immigrant station?

Mr. WENDEROTH. It is a quarantine station for use in fumigating ships that come in. It is not a detention place. The Government carries no insurance on anything, and so the fire was a dead loss.

Senator PERKINS. This station is immediately under the direction of Dr. Blue?

Mr. WENDEROTH. Yes, sir; except that the Supervising Architect has the maintenance of the physical property.

Senator OVERMAN. What is usually the cost of the erection of a quarantine station?

Mr. WENDEROTH. The cost varies very much according to the amount of business to be handled. At Portland, Me., we have for a quarantine station some $39,000. We would like to have the appropriation increased to about $60,000, in order to construct a better building. The cost of a quarantine station can be no more definitely stated than the cost of a post-office building.

Senator OVERMAN. Go ahead.

Mr. WENDEROTH. Do you wish to discuss the new items or to go on with the old items?

APPRAISERS' STORES AT GALVESTON, TEX.

Secretary MCADOO. I might ask Mr. Wenderoth to explain the situation with respect to the appraisers' stores at Galveston and the reason why it is necessary that there should be a change in the language of the appropriation.

Senator OVERMAN. That is in the letter of September 18?

Secretary MCADOO. Yes, sir.

Senator OVERMAN. An amendment was introduced by Senator Sheppard and there is a report from the Secretary of the Treasury thereon. You wish just a change in the language?

Mr. WENDEROTH. The Committee on Public Buildings and Grounds omitted to add the words which would have made available the money previously appropriated.

Senator OVERMAN. You want to use an unexpended sum?

Mr. WENDEROTH. Yes, sir.

Senator OVERMAN. How much?

Mr. WENDEROTH. $65,000 was appropriated and we desire the authority to use that. The comptroller has ruled that we can not use it under the present wording of the legislation.

Secretary MCADOO. It is merely a correction of phraseology.

Senator OVERMAN. With no additional appropriation?

Secretary MCADOO. No, sir; no additional appropriation is necessary.

At Galveston, Tex., we have a quarantine station which is very much exposed to the action of the tides and the storm, and while it is safe under normal conditions we think that it is not safe under all conditions. An additional appropriation of $50,000 is required in order to make that station secure.

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Senator OVERMAN. Mr. Secretary, this is a deficiency appropriation bill and an appropriation for a new project must come in the next regular appropriation bill.

Secretary McADOO. It is not a new project; but I am quite willing to make a statement and let the committee take the responsibility. If there should be any great storm or tidal wave down there the result would be serious and somebody will be very much censured for it.

Senator PERKINS. You state that it is absolutely necessary to preserve the property?

Senator OVERMAN. Yes; but not so absolutely urgent that it can not wait three or four months for the regular appropriation bill.

Senator BRYAN. What is the character of the work?

Secretary McADOO. I should be very sorry to take the risk of ignoring that station. There was a tidal wave at Galveston and you know what happened.

Senator PERKINS. On the report of the Committee on Commerce an appropriation was made to protect the approaches.

Secretary McADOO. We want to put some riprap alongside of the bulkheads there to protect the station.

Senator PERKINS. On the report of the Committee on Commerce there are now great harbor improvements going on there.

Secretary McADOO. In the opinion of our experts the character of work they are doing causes an additional exposure of the station. I feel that this matter should be brought to your attention. My own judgment is that this appropriation ought to be made. We ought not to take chances with that station.

Senator OVERMAN. Is there imminent danger?

Secretary McADOO. A storm is always imminent in one sense. You may have storms at any time. We do not know what the elements will do.

Senator PERKINS. Was not an appropriation made for that purpose?

Mr. WENDEROTH. An appropriation was made for the quarantine station, but it is not sufficient to place the riprap which will protect the bulkhead.

Senator OVERMAN. What is the amount of the estimate?

Mr. WENDEROTH. Fifth thousand dollars.

Secretary McADOO. That is now asked?

Mr. WENDEROTH. Yes, sir; that is the amount of the estimate.

Senator OVERMAN. How far has the building gone on with the appropriation heretofore made?

Mr. WENDEROTH. I can give you that right here. For Galveston (Tex.) quarantine station $100,000 was appropriated.

Senator OVERMAN. How much of that appropriation has been used?

Mr. WENDEROTH. It has been entirely expended.

Senator OVERMAN. And the building has been completed?

Mr. WENDEROTH. Yes, sir.

Secretary McADOO. But the bulkhead is not sufficiently protected because the appropriation was not adequate for the purpose.

Senator OVERMAN. Was that considered in drawing up the plans and making the original estimates for the building?

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Mr. WENDEROTH. It was thought that the bulkhead we had around the site of the building—and it is entirely in the water—would be sufficient, but the United States engineers are improving the harbor and deepening it and we are afraid that a wash will undermine our bulkhead. The only way to protect it is to surround it with riprap.

Semator OVERMAN. On account of conditions which have happened since?

Mr. WENDEROTH. Yes, sir.

Senator PERKINS. Gen. Bixby, the Chief of Engineers, at the time he made the estimate, stated it would be sufficient to protect all the Government property there.

Mr. WENDEROTH. That was not their advice to us.

Senator PERKINS. That was the statement made to the committee at the time.

Senator OVERMAN. Have you any report from the engineers of the War Department in regard to this matter?

Mr. WENDEROTH. Nothing except the report transmitted to us from the superintendent of the station.

TREASURY, BUTLER, AND WINDER BUILDINGS.

Secretary MCADOO. I wish to call your attention to an item in the letter of September 18, 1913, under the head of "Repairs and preservation of public buildings." We ask that the item of $12,000 be increased to $18,000 in order to make suitable repairs to the Treasury, Butler, and Winder Buildings, resulting from the storms of July 30 and August 3, 1913.

Senator OVERMAN. That is a new estimate?

Secretary MCADOO. There was some damage done by the storms of July 30 and August 3, and we want the appropriation increased, but it does not involve any additional appropriation from the Treasury. We only want to have the item enlarged for this particular purpose. It is within the appropriation for the fiscal year.

Mr. WENDEROTH. The appropriation, Mr. Chairman, is in a lump sum, but within the amount of the appropriation there are $12,000 available for the repair and preservation of these three buildings; $100,000 are available for the repair and preservation of 50 marine hospital buildings and quarantine stations. We desire to have the allotment for the Treasury, Butler, and Winder Buildings increased from $12,000 to $18,000, because of incidental damage resulting from the storms of July 30 and August 3 last.

Senator OVERMAN. These are buildings in the city, owned by the Government?

Mr. WENDEROTH. Yes, sir; the Treasury Building and the Winder Building. The Winder Building has been owned by the Government since about the forties of the last century.

Senator OVERMAN. Was there damage done to the amount of $12,000?

Secretary MCADOO. $6,000 is estimated for additional work that is needed to repair the injury resulting from those storms.

Mr. WENDEROTH. The roofs of the Treasury and Winder Buildings are very leaky. In a heavy storm the water runs in.

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Senator OVERMAN. Under what heading is that?

Secretary McADOO. It is all contained in the letter of September 18. Mr. Chairman, may I ask you to permit the Supervising Architect to run over these items? I think he can probably do it in shorter time than I can on account of his great familiarity with the various details.

Senator OVERMAN. All right; we will be glad to hear Mr. Wenderoth.

Senator BRYAN. Is there anything else that you care to say, Mr. Secretary?

ASSAY OFFICE IN NEW YORK.

Secretary McADOO. I should like to say a word about the appraisers' stores in New York which I referred to in the letter of the 16th of September. We have asked that the wording of the appropriation in that case be altered without involving the appropriation of any additional money.

Senator OVERMAN. Did it go out in the House upon a point of order?

Mr. WENDEROTH. The committee failed to report it for a reason unknown to us.

Senator OVERMAN. There is an appropriation of $75,000 for the appraisers' stores building in New York.

Secretary McADOO. No; I do not mean the appraisers' stores. I mean the assay office.

Mr. WENDEROTH. That went out on a point of order.

Secretary McADOO. You will find it at the top of page 3 of the letter of September 16 and on page 4 of the bill. The situation there is that the old assay office, which fronts on Wall Street, is in a very unsafe condition, and in order to put up the new building authorized by Congress it is necessary to pull down the old structure. However, the original act seems to contemplate merely the repairing of the old structure.

Mr. WENDEROTH. That is the object of the original act.

Secretary McADOO. That is the object. The old structure is beyond repair. We have to build a new structure. So we desire to have the language of the appropriation altered so that we may proceed with the construction of this building, which involves taking down the old one. The lot runs from Wall Street to Pine, and on Pine Street the Government has built a part of the new assay office, and the business of the Government is now being conducted in that office.

Senator PERKINS. We had a detailed report upon it at the time we were considering the sundry civil appropriation bill.

Senator OVERMAN. You now want to change the language of the appropriation?

Secretary McADOO. We merely want to change the language of the appropriation. As it stands we can not proceed. In the meantime the structure is not in a safe condition. I have no doubt that if the attention of the city authorities of New York was directed to that building they would issue an unsafe order and we would be required to take it down or protect it in some way. Due to the necessities of the Government business and the conditions prevailing I think it is of very great importance to so alter the language of the appropriation

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that we may proceed. It does not involve the expenditure of money outside of the original appropriation.

Senator OVERMAN. You do not expect to ask for any further appropriation for that purpose?

Secretary McADOO. No, sir.

Senator PERKINS. Will it not require an additional appropriation to complete the building?

Mr. WENDEROTH. No, sir

Senator OVERMAN. You think that next year you will not ask for an additional appropriation?

Secretary McADOO. We have certainly no such purpose.

Mr. WENDEROTH. We have $270,000 for the building and $322,000 for the vaults.

Senator OVERMAN. You think that is ample?

Mr. WENDEROTH. We think that is ample.

Senator OVERMAN. We will take note of that. It will be all right, I think. We are much obliged to you, Mr. Secretary, for coming down.

Secretary McADOO. I thank you. I appreciate the opportunity you have given me.

STATEMENT OF OSCAR WENDEROTH, SUPERVISING ARCHITECT OF THE TREASURY DEPARTMENT.

Senator OVERMAN. Now, Mr. Wenderoth, where do you want to take up the bill?

Mr. WENDEROTH. In this document, No. 88, I find you have marked the items that are in and those that are out.

Senator OVERMAN. The first item on page 7, Bonne Terre (Mo.) post-office building, has been withdrawn?

Mr. WENDEROTH. Yes, sir.

Senator OVERMAN. The next one is in?

Mr. WENDEROTH. Yes, sir; the Bronx (N. Y.) post-office building.

Senator OVERMAN. The next is the Carrollton (Ga.) post-office building.

Mr. WENDEROTH. We withdrew that.

Senator OVERMAN. Corinth (Miss.) post-office building is in?

Mr. WENDEROTH. And the Dublin (Ga.) post-office building and the Elberton (Ga.) post-office building.

Senator BRYAN. Go to the next one that is out.

Senator OVERMAN. Yes; that will save time.

HANOVER (PA.) POST-OFFICE BUILDING.

Mr. WENDEROTH. In passing I would like to refer to the Hanover (Pa.) post-office building, which is mentioned in Document No. 213.

Senator OVERMAN. The estimate was $10,000.

Mr. WENDEROTH. Yes, sir.

Senator OVERMAN. That was allowed.

Mr. WENDEROTH. That was allowed, but we asked for authority to use a part of that for additional land which did not appear in the authorization in the building act.

Senator OVERMAN. You will require more land?

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Mr. WENDEROTH. Yes, sir; we should have more land. We find after constructing the building that there is not sufficient space in the back to accommodate the rural free delivery service, which is extending at that point.

Senator Overman. You will notice the estimate says:

For completion of building under present limit, $10,000: *Provided*, That not to exceed $7,000 of this amount may be used, in the discretion of the Secretary of the Treasury, for the acquisition of additional land.

Mr. WENDEROTH. The House left out all those words and simply limited the appropriation of $10,000 to the completion of the building. Mr. Lafean obtained that authorization with the understanding that a part of it should be used for the purchase of additional land, but we have not as yet the authority to purchase it.

Senator OVERMAN. The language of the bill as it passed the House is:

Hanover, Pennsylvania, post office: For completion of building under present limit, $10,000.

Senator BRYAN. The proviso is left out.

Mr. WENDEROTH. Yes, sir.

Senator BRYAN. And you would like to have the proviso put in as an amendment?

Mr. WENDEROTH. Yes, sir; we would like to have that done.

Senator OVERMAN. Are you under contract to have it completed before the 1st of July?

Mr. WENDEROTH. That was the time.

Senator OVERMAN. If the building is to be completed, and completed on the present site, why do you want to buy more ground?

Mr. WENDEROTH. In the rear of the building there is not quite sufficient land to permit of tying up the rural free delivery wagons and at the same time maneuver the wagons which take the ordinary mail from the post office to the railroad station.

Senator OVERMAN. In using this $7,000 for the purpose of additional land would an additional appropriation be required for the completion of the building?

Mr. WENDEROTH. No, sir.

Senator OVERMAN. And you will ask for no additional appropriation in the future?

Mr. WENDEROTH. No, sir; that will finish the whole job before the end of the fiscal year.

Senator OVERMAN. The item for the Hillsboro, Tex., post-office building is out.

PUBLIC BUILDING AT HONOLULU.

Mr. WENDEROTH. That is out. Holly Springs (Miss.) post-office building is in. Honolulu is marked as in. I would like to say a word about Honolulu. The last public-building act authorized $100,000 for additional land. It will cost about $145,000 for the additional land, but we have left over $45,000 from the original land appropriation. If we could get it transferred as an addition to this $100,000 we could clean up that site. The House objected, and for very good reasons, as that site is costing an enormous sum of money, but we are in for it, and there seems to be nothing to do but to com-

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plete the purchase. We would not get near so much ground if we attempted to buy a new site somewhere else and there would be a very long delay.

We now have the right to use the $45,000 balance from site appropriation. The limit for additional land has been increased from $350,000 to $450,000. The awards are over $465,000. If we get the $100,000 asked for we will have $10,000 over the amount of the awards, but the interest will more than eat it up, and worse than all we can not use more than $450,000, the limit set.

Senator PERKINS. As the House declined to put it in we had better let the matter go over until the next session.

Mr. WENDEROTH. The only trouble is that we purchased the site under condemnation proceedings, and in Honolulu all condemnation awards are subject to 6 per cent interest. The amount is now about $450,000, and we would have to pay interest on that. The original site cost $150,000, and the addition is costing $450,000.

Senator OVERMAN. Can you not do without the addition?

Mr. WENDEROTH. No, sir; we find that we can not.

Senator OVERMAN. What makes land cost so much there? In New York City, perhaps, it would not cost more.

Mr. WENDEROTH. We selected a site that comes out on the Fifth Avenue of Honolulu, and we were compelled to purchase not only the land, but the good will of the merchants who had stores on that street. It was frightfully expensive.

Senator OVERMAN. You had to buy the good will?

Mr. WENDEROTH. We had to buy the business. The court virtually awarded it.

Senator OVERMAN. I think you should send some one down there to look over the situation.

Mr. WENDEROTH. That might not result in any saving. It is a situation that I do not pretend——

Senator PERKINS. You are not at all responsible for the conditions as they exist?

Mr. WENDEROTH. No, sir; I am not responsible.

Senator OVERMAN. What sort of a court allowed that? Do they not have courts like we do?

Senator PERKINS. There are Territorial courts there.

Senator BRYAN. They had to condemn it.

Senator OVERMAN. The judge ought to have set the award aside.

Mr. WENDEROTH. It was not a proceeding that I can justify. All I can say is that we are in for it now, and will you help us? There is an actual cash balance of $45,000, so we are not asking for any more money. We are merely asking to have the balance reappropriated.

Senator PERKINS. It will be necessary to make another appropriation next year?

Mr. WENDEROTH. Yes, sir. Of course we desire to buy it all now so as to stop paying interest; but if you do not feel that it is proper at this time we may use the $100,000 as far as it will go and come back for more in the deficiency bill in December. We do not want to ask you to load up this bill with anything that is not justifiable.

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ARCHITECTURAL DESIGNER.

There is a list of items an page 9 of document No. 88, headed "Special positions and commencement of special projects authorized in public buildings act," which were dropped out by the House, except one special employee for the Supervising Architect. The House committee approved the estimate for an architectural designer, but turned down two engineers. Those two engineers we did not urge, as I told the committee I was not sure they could render us the kind of service that men of that salary should render. Our engineering end is very much stronger than our architectural end. So far as that item is concerned we are content to allow it to stand. The other items we would very much like to have.

Senator OVERMAN. You mean all that are on that page?

PITTSBURGH (PA.) BUREAU OF MINES.

Mr. WENDEROTH. All that are on page 9. The first item is the Pittsburgh Bureau of Mines. That bureau deserves all the assistance that Congress will give it. It is doing a great work not only in the saving of the lives of miners, but in the introduction of new devices and in the development of our mineral resources.

Senator PERKINS. Was that brought out by Dr. Holmes?

Mr. WENDEROTH. No; I think he was in Alaska at the time of the hearing before the House committee. We buy all the operating supplies for buildings. The appropriation is in the neighborhood of a million and a half, and about $800,000 of that is for coal. We send samples submitted by bidders to the Bureau of Mines and they analyze them and advise us as to the most economical fuel. That is a service of great value which is being rendered us freely.

Senator OVERMAN. There was an appropriation made of about $300,000?

Mr. WENDEROTH. This is an appropriation of $15,000 to commence the work. They want half a million dollars to build modern laboratory buildings in the city of Pittsburgh. They intend to put up modern laboratories to test out all kinds of fuels. It is a most meritorious institution and is doing excellent work.

Senator OVERMAN. It is fine, we know, but here we have reached out to furnish assistance to various bureaus. The Bureau of Standards is getting big appropriations.

Mr. WENDEROTH. The Bureau of Mines only gives attention to fuel. The Bureau of Standards renders an enormous assistance to us in testing stone and other building materials and in various other ways. They have been working, for instance, on a long series of tests of the steel that is to be used for the vaults in the new Bureau of Engraving and Printing.

Senator OVERMAN. If we should appropriate, say, enough money why could we not have all this force for the completion of buildings, and everything done by Government officers, instead of paying $300,000 or $400,000 to architects for great buildings, as has been done in some instances?

Mr. WENDEROTH. We could do that, Senator.

Senator BRYAN. You mean for post-office buildings?

Senator OVERMAN. All sorts of buildings.

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UNIFORMITY OF PUBLIC BUILDINGS.

Senator BRYAN. Mr. Wenderoth, did you notice Senator Sutherland's suggestion at the time the public buildings bill was passed? It was to the effect that the public buildings be made uniform, so that one set of plans could answer for all the buildings. Have you ever considered that?

Mr. WENDEROTH. That is a sort of fetish, Senator. I have considered it, and I submitted to Secretary MacVeagh a very voluminous report on the subject, which no one will read. But still I have investigated it. You can not standardize the individual buildings. You can not take a set of plans for a building here and from them construct a building there with the same money. There are so many conditions that change; there are differences in freight rates, in the local cost of material and labor, and there are all kinds of varying conditions, especially with the foundations.

Senator BRYAN. Even with the differences in local conditions, could we not have a style of buildings that would be uniform?

Mr. WENDEROTH. That is what we are now doing.

Senator BRYAN. You do that now?

Mr. WENDEROTH. We are doing that. Our effort is not to develop complete sets of building plans but to develop types of buildings. Then we adapt the type to the local conditions. The local conditions vary to a greater extent than you would imagine.

Senator BRYAN. I am glad to hear that you are doing it.

Mr. WENDEROTH. We are doing it.

POST-OFFICE BUILDING AT PORTLAND, OREG.

Senator OVERMAN. Now we will take this item of $10,000 for the post-office building at Portland, Oreg., which is out.

Mr. WENDEROTH. At Portland, Oreg., we asked for $10,000. In the hearings we asked that the balance remaining from the purchase of the site be reappropriated and made available for the construction of the building within the limit and that the item of $10,000 be eliminated. There is about $160,000 left from the site. Five hundred thousand dollars was appropriated and the site cost about $340,000, leaving $160,000. We desire to withdraw this item of $10,000 and substitute legislation reappropriating the balance of the site appropriation, making it available for the building within the authorized limit. It does not cost a cent of money.

Senator OVERMAN. That is contained in the Secretary's letter?

Mr. WENDEROTH. Yes, sir.

Senator OVERMAN. All right then. That is just a change of language.

INTERIOR DEPARTMENT OFFICES.

Mr. WENDEROTH. Yes, sir. The Washington (D. C.) building for the Interior Department offices is an identical case. We asked for $25,000 and then we found that there was about $96,000 left over from the purchase of the site. We asked for the reappropriation of that sum within the limit fixed for the building so that we may go forward with the plans.

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Senator OVERMAN. Where is that site?

Mr. WENDEROTH. Between Eighteenth and Nineteenth and E and F Streets NW. The building of these offices for the Department of the Interior is I think a most meritorious project. They certainly need the buildings. It will take care of the Geological Survey and other bureaus of the Interior Department. Their fire loss Dr. Smith told me has been an average of about $25,000 a year for the last five years in property that can not be replaced.

Senator OVERMAN. Is that site big enough for the building?

Mr. WENDEROTH. It is gigantic; it is 400 feet square, a little larger than the House Office Building, and as large as the Senate Office Building. My idea is to build a modern style office building over a part of the site now, but so designed that we can add to the building and ultimately make it a 10 or 12 story building, such as the Southern Building or the Woodward Building.

NATIONAL ARCHIVES BUILDING.

The item for the National Archives Building was an appropriation of $5,000 to prepare sketches in order to determine what such a building should be before we acquire a site. It is purely tentative. It does not commit Congress to appropriate funds immediately, because it carries no authority to purchase the site or to contract for a site or to contract for the erection of a building. It merely gives authority to study the situation and collect the information that is necessary in order to submit sketches to Congress. It is a very unique problem; one that this Government has never encountered. This Government never has had an archives building. There are a number in Europe, but there has never been one here. It is proposed to collect the data, make sketches, and to submit them to Congress.

Senator OVERMAN. How is that appropriation to be used?

Mr. WENDEROTH. The appropriation of $5,000 will be used for the services of draftsmen to prepare drawings and sketches.

Senator OVERMAN. You have not the force in your office to do that?

Mr. WENDEROTH. No, sir; we have not. If we used men from our regular force to do this work, we would hear from it very soon, because it would reduce our output.

It is the same in reference to the Patent Office Building. There is an estimate of $5,000 to prepare preliminary sketches to submit to Congress.

FORCE IN OFFICE OF SUPERVISING ARCHITECT.

Senator PERKINS. The Supervising Architect has a more underpaid force than any other high officer of the Government.

Senator OVERMAN. I was just asking if you could do it and save the Government this additional expenditure.

Mr. WENDEROTH. I think it would be quite proper to employ private architects to assist us in the artistic end of the work, but nobody knows better how to build a post-office building than the Supervising Architect, because that is what he is here for. We are willing to admit that we do not know everything that ought to be known

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architecturally and that we can standardize the buildings as far as there can be a standard, but we are weak on the artistic end.

Senator OVERMAN. Take the Interior Department building we are going to put up and the building for the Department of Justice opposite the New Willard, could not that work be done in your office if you had sufficient force?

Mr. WENDEROTH. For the Interior Department we intend to do it. The legislation provides that we may employ draftsmen and engineers, and we can employ men of a little higher grade because we can pay them a little more money than Congress allows for our permanent force. You spoke of the buildings to be erected south of the Avenue. We could contribute there; but our contribution would not be very great, because all those buildings are to be monumental and are for special purposes. There is to be a great deal of "architecture" in them.

Senator OVERMAN. Could you not get architects in your office who would do that work?

Mr. WENDEROTH. We could do it as the House and Senate Office Buildings were built, and I think you will agree with me that they are about the best contributions to the public architecture of Washington since the Capitol was constructed. You know how they were built?

Senator OVERMAN. They were built by Mr. Woods.

Mr. WENDEROTH. Yes, sir; he was the head, and I had a little something to do with the work, also.

Senator OVERMAN. Of course, he could not do it. He hired men to do it. You could do the same.

Mr. WENDEROTH. Yes, sir. Mr. Woods had his plans prepared here and I was in charge of that part of the work. Then he had architects from New York, Messrs. Carrère and Hastings, who acted in a consulting capacity.

Senator OVERMAN. Take the Library Building.

Senator PERKINS. With Mr. Green as superintendent.

Mr. WENDEROTH. Mr. Green is superintendent.

Senator OVERMAN. Gen. Casey built it.

Mr. WENDEROTH. Yes, sir; he was in charge, and Mr. Green was his assistant. Afterwards he became superintendent of the building. I am very anxious to obtain the assistance of private architects, but not to do the things we can do, because that would be foolish. No one could justify any such proposition economically. The private architect could help us to do better the things on which we are necessarily weak. We can not place the very best architects upon our pay roll at salaries of $200 a month, but we can obtain architects at reasonable compensation to help us in the artistic work. We can take care of all the rest. Every time one of these architects is commissioned to prepare a set of plans and submits them to us we must change them materially. It is not a question whether his way of doing it is as good or better than ours. It is simply that it must be done in a certain way to suit our conditions. I do not think we should hire some one else to do what we can do, but I do think that in helping us to make our buildings more artistic the private architect can render us very valuable assistance.

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BOSTON IMMIGRANT STATION.

The appropriation for the Boston immigrant station was not reported by the House Committee. That is a very important project, Mr. Chairman.

Senator OVERMAN. I notice that the difference between $17,000 and $427,000 really reduces the total appropriation to $410,000.

Mr. WENDEROTH. Yes, sir; I did that. I made up my mind that instead of obtaining authority to employ outside people we would take it on ourselves. We will place it in our current program and do it without asking for any outside help. We are willing to do it that way. But the appropriation is not sufficient. It never was. It omits the authority to build a sea wall and pier and the Comptroller of the Treasury will not permit us to build a building unless we build these approaches because he considers that they are a part of the whole construction. And there we are. Even if we had the money we could not build the building because there is no authority to build the approaches. If we do build the approaches we must have more money. Therefore the appropriation should be raised to $410,000.

Senator OVERMAN. You want $410,000?

Mr. WENDEROTH. Less $375,000, which we already have.

Senator OVERMAN. The total amount proposed to be appropriated was $52,000. The limit of cost heretofore fixed for the Boston immigration station was $375,000. You want it raised to $410,000. You propose first to raise it to $427,000 and withdrew $17,000 of that estimate, making it now $410,000; in other words, $35,000——

Mr. WENDEROTH. That is right; to secure an increase in the limit of cost of $35,000 for reasons set forth not only in the revised estimates but also in House Document No. 91, Sixty-third Congress, first session.

Senator OVERMAN. The next item, Harrisburg, Pa., is in, and the next, Lynchburg, Va., is in.

NEW YORK BARGE OFFICE.

Mr. WENDEROTH. The New York barge office is out. We are in a bad state there, Mr. Chairman. The House committee would not help us and we can not finish the building. I told the chairman of the House committee that we had no excuse. We were extravagant in the building in order to make it handsome and decorative, as it is located at the end of Battery Park. We are now confronted with a situation which we have virtually created. We need three piers at the barge office, two of them to form a slip for the Ellis Island ferry, and the third will divide the remainder of the water front so that one portion will be available for the boarding vessels and the other portion for the revenue cutters, which now have no place to tie up. It is a deficiency that we can not justify, but nevertheless it exists.

Senator OVERMAN. What are you doing now? Have you no wharf at all?

Mr. WENDEROTH. We have the building, but we have no wharf.

Senator OVERMAN. You have no wharf at all?

Mr. WENDEROTH. No, sir.

Senator OVERMAN. You can not get up to it?

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Mr. WENDEROTH. No, sir; we can not get up to it.

Senator OVERMAN. How do you do?

Mr. WENDEROTH. We do not know. I know nothing to say, Mr. Chairman, except what I would not advance under any conditions, as an excuse, that it happened before I came into the department. I consider that I am responsible, just as much as my predecessor, because I am the head of the office; but nevertheless, we can not build the piers.

Senator OVERMAN. It is very strange your predecessor did not move for that before.

Mr. WENDEROTH. I do not understand it or attempt to explain it. It is a condition.

Senator PERKINS. What is the depth of water there?

Mr. WENDEROTH. I do not know, sir.

Senator OVERMAN. There would be no trouble if you had a wharf. Suppose we build a wharf, would there be any difficulty in a ship getting there?

Mr. WENDEROTH. Ships do not land at the barge office. It is for the exclusive use of the Ellis Island Ferry, the boarding vessels, and the revenue cutters. We are building on the site of the old barge office.

Senator OVERMAN. The old barge office had piers.

Mr. WENDEROTH. No, sir; the Ellis Island ferryboat came up sideways and landed sideways, and it was very difficult, especially in stormy weather. Sometimes it would take them as long as an hour to make a landing. The revenue cutters are now tying up anywhere that anybody will permit them. Like the Wandering Jew, they have no abode at all.

NEW YORK MARINE HOSPITAL.

Senator OVERMAN. The next item is the New York Marine Hospital, and that is out.

Mr. WENDEROTH. The marine hospital, New York, Mr. Chairman, is one that we do not feel that we are to blame for. We looked over the building. It was a great many years old. We made an estimate of what it would cost to repair it and we obtained an appropriation. Then when we stripped the plaster from the walls we found there were let into it horizontal beams that they used to nail the interior finish to, and these had rotted and weakened the walls very materially. So it was necessary to expend a part of that appropriation in strengthening the walls. We had not counted on that. We had no way of knowing that such a condition existed. We are now approaching the completion of the building. I mean that we have gone as far as we could. We reconstructed the north wing and portions of the balance of the building, but we need $12,000 to finish it. It is a condition that no one could possibly have foreseen. It was a very unusual and a very unique method of construction, a style that no sane person would adopt. It may have been built by a ship carpenter.

Senator PERKINS. Suppose we put in that item.

Senator OVERMAN. That is included in the Secretary's letter?

Mr. WENDEROTH. Yes, sir; it is in the letter.

Senator OVERMAN. I suppose the letter treats of all these items?

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Mr. WENDEROTH. Yes, sir.

Senator OVERMAN. Is there anything you want to submit that is not contained in the Secretary's letter, or do you want to emphasize some item more than is done in the letter?

Senator PERKINS. Taking up the items which are most important.

Senator OVERMAN. Yes; we want to know which are most important.

MECHANICAL EQUIPMENT DUE TO PARCEL POST.

Mr. WENDEROTH. I will pass over the other items to page 12, the item for mechanical equipment for public buildings in Document 88: Repairs and preservation of public buildings, mechanical equipment for public buildings, vaults and safes for public buildings, furniture, and repairs of furniture.

The parcel post was inaugurated the 1st of January of this year. These estimates are estimates to supplement the sundry civil appropriation bill for the fiscal year 1914. The estimates for that bill were made up last summer, four or five months before the parcel post was inaugurated, and we estimated nothing on account of the parcel post, but through the mix-up over the passage of the public building act and the veto of the sundry civil appropriation bill it happened finally that the sundry civil bill passed after the public building bill. Therefore, we had nothing in the sundry civil bill to take care of the parcel post. The Post Office Department was given an appropriation of $750,000 with which to inaugurate the parcel post and for equipment and all that sort of thing. We submitted that to the comptroller and he ruled that "equipment" meant counters, screens, and things of that sort. So we could do nothing for the Post Office Department. Now, after the expiration of eight months the parcel post has become so extensive that they are calling on us continually for more equipment. Their present appropriations are not available for equipment. They are calling on us for more furniture for the post-office workrooms, changes in the mechanical equipment, etc.

Senator OVERMAN. You say the appropriation made in the sundry civil appropriation act is not available?

Mr. WENDEROTH. The post-office appropriation is not available and it was never intended to take care of such items. It was intended to be available for wagons and bags and containers and all that sort of thing, but not for changes in a building, because the Treasury Department has always attended to changes in buildings, and it would be very embarrassing if two departments were charged with similar duties.

Senator OVERMAN. Could you not get along without this appropriation until the regular appropriation bill comes in?

Mr. WENDEROTH. We do not think we can, Senator.

Senator PERKINS. You have been going on less than three months with the new appropriation?

Mr. WENDEROTH. But we have had now eight months' experience with the parcel post which the department placed in operation January 1. The Postmaster General is intending to extend the weight limit. It calls on us for changes, such as taking out post-office screens and placing in elevators so that they use basements in connection with the first floor, and all that sort of thing. We will be confronted with a deficiency if we give the Post Office Department

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the accommodations it needs for the Parcel Post Service, and I think we are under obligation to do it. The Government expects revenue from the whole postal service. If we make the changes incident to the parcel post, we must neglect the repairing of roofs and heating apparatus and a great many other things for which these appropriations are usually available. We feel that we really should have this money to augment the appropriation in the sundry civil bill which was passed June 23, 1913, although we are only in the first quarter of the fiscal year, still we know from the eight months' experience of the parcel post that our present appropriations are not going to last out unless we neglect our duty in conserving the physical integrity of the approximately 800 buildings under our care.

Mr. Fitzgerald did not look at it that way, and the House Committee on Appropriations did not look at it that way. Of course, we may come to Congress in connection with the next urgent deficiency appropriation bill and say there is a deficiency, but we could only arrange it that way by neglecting what should otherwise have been done. Our total estimates were cut $50,000 for this fiscal year. We are expected to take on all this additional work included in the parcel-post system, and it is rather a difficult situation for us.

Senator OVERMAN. You have an appropriation of a million and a half, have you not?

Mr. WENDEROTH. I think for all those purposes we have a great deal more than that.

Senator OVERMAN. I mean for mechanical equipment.

Mr. WENDEROTH. We have not that much for mechanical equipment.

Senator OVERMAN. For mechanical equipment and also for general expenses you have $525,000; for repairs and approaches to buildings you have $625,000.

Mr. WENDEROTH. Yes, sir.

Senator OVERMAN. Is there anything else that you especially wish to call our attention to?

Mr. WENDEROTH. I intended to say that we estimated for the fiscal year 1914 a total of $7,130,250 for our various annual appropriations, and we were given $6,834,500, without any consideration of the additional burden which the parcel post would place on us.

Senator OVERMAN. That was not estimated for by you, I understand?

Mr. WENDEROTH. It was not estimated for. Our estimates were made up four or five months before the parcel post was put into operation and naturally we could not estimate in advance. There were no data. The Post Office Department could not tell us what they would require in the way of inaugurating the service.

Senator OVERMAN. How much money have you spent out of that fund for this purpose?

Mr. WENDEROTH. I could not tell you offhand, sir. I can try to find out.

Senator OVERMAN. Go to the next item.

THE BUTLER BUILDING.

Mr. WENDEROTH. At the top of page 12, Mr. Chairman, for mechanical equipment for public buildings we ask to have the allotment

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increased from $9,000 to $11,000 for this fiscal year. Nine thousand dollars is the usual limit, but there are certain repairs to the toilet rooms, etc., in the Butler Building which will be an added burden, and we would like to have that allotment increased for that purpose.

Senator OVERMAN. For the Winder Building?

Mr. WENDEROTH. No, sir; the Butler Building, where the Public Health Service is located.

Senator OVERMAN. That is all contained in the Secretary's letter?

Mr. WENDEROTH. Yes, sir. It is in Document No. 213, I think.

NEW YORK CITY POST-OFFICE BUILDING.

The next item on page 12 is for furnishing the new post-office building in New York City. Mr. Chairman, unless we get that appropriation we will have to close up that building and not use it. Our present appropriation for furniture is $900,000. That $900,000 is used to put in the complete initial furniture equipment in 75 or 80 new buildings and take care of all the additional furniture and renewals of furniture in some 800 buildings, as well as lighting fixtures, carpets, etc.

Senator OVERMAN. Nine hundred thousand dollars is the complete sum for all that purpose.

Mr. WENDEROTH. The complete sum for all that purpose. It buys court-room furniture and all the working-room furniture for the use of the Post Office Department.

Senator OVERMAN. This is an urgent deficiency appropriation bill. Why was not that estimated for before?

Mr. WENDEROTH. The $200,000 was estimated for in the sundry civil appropriation bill.

Senator OVERMAN. How much money have you on hand? How much have you expended of the $900,000?

Mr. WENDEROTH. We generally draw on it heavily in the first three months. We make a great many annual contracts. I suppose we have now obligations amounting to half of that sum. The New York post-office building is now complete. It represents an investment, I think, of three and a half million dollars. Unless we can furnish it, that investment is tied up.

Senator PERKINS. There are no funds available to furnish it?

FURNITURE FOR PUBLIC BUILDINGS.

Mr. WENDEROTH. No, sir; no funds for furniture. We would use this appropriation and then toward the end of the year we would be confronted with a number of buildings we could not furnish; buildings scattered all over the country as they became completed. We have no assurance from the Appropriations Committee of the House that they will take care of us at the end of the year. That being the case, we must look after the buildings that we know are coming along.

Senator PERKINS. There was an estimate of $900,000 for the purchase and repair of furniture for public buildings for the fiscal year 1914, and that the House allowed you.

Mr. WENDEROTH. There was an estimate of $950,000 and we were allowed $900,000, as I recall it.

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Senator PERKINS. The House allowed $900,000 for the fiscal year 1914. In other words, it allowed within $50,000 of the amount estimated. The first quarter is near its close. How much have you used of that appropriation?

Mr. WENDEROTH. We have used half of it, because we enter into all our annual contracts at the beginning of the year, so as to obtain quick deliveries. We have used about half of it at least. We have no assurance that if we furnish the New York post-office building out of what balance is left we will be taken care of.

Senator PERKINS. We are obliged to take care of you, but as a matter of fact, as the acting chairman has said, it is not a deficiency at this time.

Mr. WENDEROTH. No, sir; it is not a deficiency in that we have exhausted our general appropriation. It has been the custom to pass a special appropriation for each large building, such as the New York courthouse, the Indianapolis post office, the Cleveland post office. For all those buildings there were special appropriations. Of course we can go ahead and take the $200,000 out of the balance, but we must come to Congress with a large deficiency in December. Then whether we will be given it I do not know. If Congress says, "You have managed so far; we will let you manage for the rest of the session," and if we are not given any relief with a deficiency in December——

Senator OVERMAN. That is the point Senator Perkins made. It is not really a deficiency now. It will not be a deficiency until December.

Mr. WENDEROTH. It is not a deficiency until that appropriation is exhausted. Of course we have no assurance that we will get it, and we will be confronted in the last six months of the fiscal year with a deficiency.

Senator OVERMAN. You see that this is an urgent deficiency appropriation bill.

Mr. WENDEROTH. I understand.

Senator OVERMAN. If there is anything that is very important, that is serious, that is urgent, call our attention to it.

Mr. WENDEROTH. It is in Document No. 213, Senator.

Senator OVERMAN. That is where you ask for an additional force.

FORCE IN OFFICE OF SUPERVISING ARCHITECT.

Mr. WENDEROTH. First, in Document 88, we asked for a large force in order to take care of certain deferred projects. It is desirable that we should be given the force called for in Document 213, in which the Secretary withdrew a former estimate. It now is a total of $49,920, of which $30,000 has already been appropriated by the House and is now in the bill as expenses of site agents. The balance is for clerks and one draftsman that we need. If you allow us these special projects, such as the Bureau of Mines and the offices for the Interior Department, etc., those additional projects we are in a position to take up immediately. Having authority in the act to employ draftsmen and engineers, it will mean an additional clerical service that the legislation does not provide for. Therefore, if you allow us those special projects, we must ask you to allow us the additional clerks.

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Senator OVERMAN. That is conditioned upon the allowance of these special projects?

Mr. WENDEROTH. Yes, sir. If you do not allow us the Department of the Interior and the Bureau of Mines and the Patent Office and all those things, then we do not ask for the clerks; but if you do, in order to keep the office balanced we should have these clerks, and there are very few we are asking for. Out of that total of $49,000 there is $15,000 for the compensation of site agents, and $15,000 for expenses of site agents.

Senator OVERMAN. That was allowed?

Mr. WENDEROTH. Yes, sir; that was allowed. Of course, this Document No. 213 was written before the deficiency bill passed the House..

EXPENSES OF SITE AGENTS.

There is only one other thing, Mr. Chairman, which a telephone message from the Secretary asks me to point out to you. I refer to the legislation as it passed the House, providing for the expenses of site agents. It contains an allowance, at page 6 of this bill, of $30,000 for the expenses of site agents, but places on it a limitation of not over $300 a month I think.

Senator OVERMAN. The clause in the bill reads:

For compensation (not exceeding in the aggregate $15,000 and at a monthly compensation not exceeding $300 each, to be fixed by the Secretary of the Treasury) and traveling expenses of agents to select and recommend sites that have been authorized by law for public buildings, for the fiscal year 1914, $30,000.

Here is what the Secretary of the Treasury says about it in his letter:

The revised estimates (Doc. No. 213, p. 9) asked for the sum of $34,800. The deficiency bill, page 6, reports an appropriation of $30,000. It is recommended that the item under this caption which appears on page 9 of Document No. 213 be substituted for that which is in the deficiency bill, page 6, and it is partcularly recommended that the limitation placed upon the amount of compensation which may be paid site agents, temporarily employed, be fixed at not to exceed the rate of $5,000 per annum instead of the rate which now appears in the deficiency bill.

Mr. WENDEROTH. The rate is $3,600 a year in the deficiency bill. The Secretary requests that you eliminate that limitation entirely and leave the rate of compensation to him.

Senator OVERMAN. You want to leave out the words "at a monthly compensation not exceeding $300"?

Mr. WENDEROTH. We would like to have that eliminated, if you will do it. We can not obtain the class of men we want at $300 a month for purely temporary service. They will be employed only six months. We want men of character, men of knowledge, men of business training. Men of the kind we desire can secure in private employment much more than $300 a month.

Senator OVERMAN. If it is your idea to make it $5,000 each per year, it would give only three agents.

Mr. WENDEROTH. It would give us six agents, as we intend to employ each for only six months. That is what our estimate is based on.

Senator OVERMAN. You could take men from the departments for this purpose?

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Mr. WENDEROTH. No, sir; the whole object of this legislation is not to take men from the departments; men who have no knowledge of this work; men whose normal and ordinary duties would be interfered with. We intend to find men who have had good training in the real estate business; men who know values and know how to obtain information on the subject; men who can find out what the real value is, and all that sort of thing. We wish to obtain men who have good business ideas and employ them temporarily at the rate of $5,000 a year, but to employ them for only six months.

Senator OVERMAN. At $2,500?

Mr. WENDEROTH. At $2,500.

Senator PERKINS. It is a very important duty.

Mr. WENDEROTH. These are important duties, and these men will save their pay many times over through bringing their special knowledge to the Treasury Department. At present the recommendation is submitted by an employee of the Treasury Department. After he has done his very best we will take it up by correspondence and the Secretary of the Treasury must form his opinion at long range.

Senator OVERMAN. Heretofore you have been sending out agents from your office to select a site?

Mr. WENDEROTH. Draftsmen and others who desire trips.

Senator OVERMAN. Yes; I know.

Mr. WENDEROTH. In summer they want to go to Maine and in winter they would like to select a site in Florida. So it goes.

Senator OVERMAN. I know of one case where a man wanted to make a trip in a campaign and he was sent out to select a site.

Mr. WENDEROTH. We want to break that up, and we would like to have the limitation removed so that the men we engage will be men who are really worth having.

STATEMENT OF GEORGE E. ROBERTS, DIRECTOR OF THE MINT.

(Hon. Francis G. Newlands and Hon. Key Pittman, Senators from the State of Nevada, and Hon. Henry L. Myers and Hon. Thomas J. Walsh, Senators from the State of Montana, appeared.)

The ACTING CHAIRMAN (Senator Overman). Mr. Roberts, we will be glad to hear you. You have document No. 88 before you?

Mr. ROBERTS. Yes, sir. The items on the assay offices are at page 5.

Senator OVERMAN (to Senator Newlands). Do you desire to be heard before Mr. Roberts proceeds?

Mr. ROBERTS. Perhaps you had better let me state the facts.

Senator NEWLANDS. All right.

ASSAY OFFICES.

Mr. ROBERTS. My appearance, Mr. Chairman, is due to differences which arose between the Senate and House over the assay offices at the close of the last session in the legislative, executive, and judicial appropriation bill. You will remember that differences arose, and the conferees were deadlocked up to the last day of the session.

Senator OVERMAN. Yes; all night long.

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Mr. ROBERTS. They finally came to an agreement in the last hours of the session by making a severe cut in the appropriations for five of the assay offices. Those cuts were made without any consultation with the department, and it is because the sums appropriated are inadequate to carry these offices through the year and in some respects to carry them even into the next session of Congress, that I appear before you.

Senator OVERMAN. They all ought to be abolished, however.

Mr. ROBERTS. That is not the question I suppose to-day.

Senator NEWLANDS. Oh, no.

Senator OVERMAN. The only way it seems to get rid of them is not to make the appropriations.

Mr. ROBERTS. It is for the reason stated that I thought it necessary to make a statement to you.

The House committee proposed to abolish the offices at Carson, Boise, Deadwood, Helena, and Salt Lake City. The bill passed the House in that state. The Senate restored the appropriations and finally in conference these cuts were made.

We had estimated that we would require $25,000 for the transportation of coin and bullion between the mints and assay offices. Nearly all of that is expended for the transportation of the bullion which is purchased at the assay offices to the mints. We buy the bullion at the assay offices; it becomes the property of the Government, and in order to become available at all of course it must be transported to a mint. We asked for $25,000 for that purpose, and the House cut it to $10,000, no doubt upon the theory that there were going to be five less assay offices than the previous year. Then they put back the five offices in the bill and did not restore the appropriation for the transportation of bullion. They gave us only $10,000 instead of the $25,000 we asked for and which will be necessary.

Senator OVERMAN. Are you buying any bullion at these offices?

Mr. ROBERTS. We are buying it. We have expended for the transportation of bullion since the 1st of July $6,876.69.

Senator OVERMAN. In three months?

Mr. ROBERTS. In less than three months. It will be three months at the end of September.

Senator PERKINS. To-day is the 22d.

Mr. ROBERTS. To-day is the 22d. Our appropriation for the transportation of bullion will be exhausted before Congress meets in regular session in December. These offices are not equipped with modern vaults or safes. We do not consider it desirable or prudent to be accumulating bullion in any considerable quantity there. It is absolutely necessary to transport the bullion.

Senator PERKINS. How much do you estimate is required?

Mr. ROBERTS. We ask for our original estimate, $25,000 in all, or $15,000 in this bill.

Senator OVERMAN. Have you transported more in the past three months than you will transport in the next three?

Mr. ROBERTS. Perhaps so. The summer season is rather heavier, but we will require the full appropriation of $25,000. There is some question whether it will be enough, but that was our original estimate.

Senator OVERMAN. How do you transport the bullion, by express?

Mr. ROBERTS. By express.

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Senator OVERMAN. Express charges have gone down somewhat, have they not?

Mr. ROBERTS. I have not heard of it.

Senator PERKINS. It is claimed that the parcel post is ruining their business.

Senator OVERMAN. You could not ship bullion by parcel post?

Senator PERKINS. As a matter of fact, it has been shipped by registered mail.

Mr. ROBERTS. There is some bullion shipped by registered mail. The chief difficulty arises in the delivery from the post office to the mint. The postmaster at San Francisco declines to deliver the bullion to the mint; he will not assume that risk, and the superintendent of the mint declines to go to the post office for it and assume the risk himself; and there you are.

Senator PERKINS. That presents a rather embarrassing situation.

Senator OVERMAN. Yes; that is very plain. How about the next item, contingent expenses, mint at Carson, Nev., $1,000?

Mr. ROBERTS. The conference committee made a very heavy reduction in wages and salaries; too heavy, in my opinion, but I have not asked for anything to supplement that for the remainder of this year. We have had two resignations as a result of it, but have been able to fill the places temporarily any way, and I think we can perhaps get through the year. But when it comes to incidental and contingent expenses they can not be arbitrarily reduced. Those are expenditures for fuel and lights and water and crucibles and acids and things of that kind. If the business of the offices keeps up, if their receipts are as heavy as they were before, those expenses will necessarily have to be just about what they have been in the past. All these things are bought under proposals from the lowest bidder, and I do not know how to reduce those expenses. We have asked for $1,000 additional. For instance, here is Boise. Last year——

Senator OVERMAN. But that is not a deficiency. You are asking for an additional appropriation, and that will come in the next regular appropriation bill.

Mr. ROBERTS. Senator, the law is very strict about creating deficiencies nowadays. Furthermore, section 3679 provides—let me read the statute:

> No department of the Government shall expend in any one fiscal year any sum in excess of appropriations made by Congress for that fiscal year or involve the Government in any contract for the future payment of money in excess of such appropriations. * * *
>
> * * * All appropriations made for contingent expenses or other general purposes, except appropriations made for the fulfillment of contract obligations expressly authorized by law, or for objects required or authorized by law without reference to the amounts annually appropriated therefor, shall, on or before the beginning of each fiscal year, be so apportioned by monthly or other allotments as to prevent undue expenditures in one portion of the year that may require deficiency or additional appropriations to complete the service of the fiscal year. * * * Any person violating any provision of this section shall be summarily removed from office and may also be punished by a fine of not less than one hundred dollars or by imprisonment for not less than one month.

I doubt whether we ought to spend from month to month now more than the monthly proportion of the year's expenditure. We have been obliged to do it so far, but I have felt warranted in doing

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it under the conditions, and I felt it was my duty to bring the facts before the committee.

These appropriations will not run one-half through the year. We will be out of money probably before the regular deficiency bill is acted upon at the next session, and inasmuch as it is now a criminal offense to create a deficiency I do not intend to create one myself in any office under my jurisdiction.

Senator OVERMAN. I wish all officers were like you.

Mr. ROBERTS. At the Boise office last year we had an appropriation of $2,500 for contingent expenses. This year it is cut to $1,000. The actual expenditures last year were $1,966.03. We have asked for another thousand dollars there.

At Helena last year we had an appropriation of $3,250. That was cut to $1,000. The actual expenditures last year were $2,328.58.

At Salt Lake City last year the appropriation was $3,500. The appropriation is $1,000. The actual expenditures were $2,711.35. We have asked for another thousand dollars there.

At Carson City last year the appropriation was $3,000. The actual expenditures were $1,997.12. We have asked for another thousand dollars.

At Deadwood the appropriation last year was $1,500. The amount now given is $500. The actual expenditures were $1,368.18. We have asked for another thousand dollars there.

Those appropriations are absolutely necessary if the offices are to be continued through the present fiscal year.

All of these reductions were effected, as I have said, in conference in a very hasty and arbitrary way, without any consultation with the department. I thought it was important that the committee should have the facts put before them, because the assay offices will have to be closed unless some additional funds are provided for them. I will turn the case over to Senators Newlands and Pittman.

Senator NEWLANDS. Mr. Chairman, may I ask Mr. Roberts a question or two?

Senator OVERMAN. You may ask him any question you desire, Senator Newlands.

Senator NEWLANDS. Mr. Roberts, assuming that these appropriations that you asked for are made in this deficiency bill, what will be the total expense for the year of maintaining the five assay offices mentioned in the bill?

Mr. ROBERTS. I will give you the total by putting down the sum for each office.

Senator OVERMAN. $20,000 is what is asked.

Senator NEWLANDS. What was the total amount appropriated last year for the assay offices at Carson, Boise, Deadwood, Helena, and Salt Lake City?

Mr. ROBERTS. I will have to figure that out.

Mr. REA. The incidental and contingent expenses for Carson were $3,000; Boise, $2,500: Deadwood, $1,500; Helena, Mont., $3,250; and Salt Lake City, $3,500.

Senator NEWLANDS. Now what is the total of that?

Senator OVERMAN. $13,750.

Senator NEWLANDS. Then $25,000 is to be added?

Mr. ROBERTS. The total expense would be $43,000 this year if you grant the additional appropriation we have asked.

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Senator NEWLANDS. $43,000 for this year.

Mr. ROBERTS. Yes, for all. That does not include the transportation of coin and bullion.

Senator NEWLANDS. That would be $15,000 more?

Mr. ROBERTS. It would be $25,000 more.

Senator NEWLANDS. Then what would be the total?

Mr. ROBERTS. $68,000.

Senator NEWLANDS. That includes the $20,000 you ask for now as a deficiency?

Mr. ROBERTS. Yes.

Senator NEWLANDS. Would those sums adequately provide for these assay offices?

Mr. ROBERTS. Senator, I think some of these salaries were cut too low, and if the offices are to be maintained there should be a little more money for the men. These are responsible positions. These men assay the bullion and pay for it. They are authorized to draw checks on the Treasury of the United States in payment for bullion. They buy several million dollars' worth in a year. They should be competent assayers and men of some standing and some responsibility.

Furthermore, there should be help enough in each office so that it is not all dependent upon one man. We would like to have two men competent to check each other. In assay work there should be one man there in case the other is sick, and there should be some opportunity for vacations, and so on. All that is wiped out by the reductions that were made in conference. But I have not asked for any reconsideration of the appropriation for wages or salaries this year.

Senator NEWLANDS. I simply inquire what sum would be required to adequately meet the demands at these assay offices for the purposes for which they are intended. How much would you add to the $68,000?

Mr. ROBERTS. Just let me make some figures and I will give you the total amount that was given to us last year and that is not very far out of the way.

Senator OVERMAN (to Senator Newlands). Do you propose to ask for an appropriation for that purpose in this bill?

Senator NEWLANDS. No; not in this bill. I thought it might be well to get the information just now for the committee and for ourselves.

Senator OVERMAN. You can send an estimate down in the next appropriation bill for all these items.

Mr. ROBERTS. Yes; we will submit our estimate, of course, for the next year, but I will give you these figures. Our appropriations last year were $91,890.

Senator NEWLANDS. That was sufficient to meet all the requirements?

Mr. ROBERTS. Yes.

STATEMENT OF SENATOR FRANCIS G. NEWLANDS.

Senator NEWLANDS. Mr. Chairman, I wish to present briefly the views of myself and my colleague regarding this matter. There is general legislation now upon the statute books providing for an assay office at each one of these places and fixing the salaries of the officials.

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Senator OVERMAN. No.

Senator NEWLANDS. I think so.

Senator OVERMAN. A statute fixing the officers and all that, but the salaries are fixed in the legislative, executive, and judicial appropriation bill every year.

Mr. ROBERTS. Excuse me. I think the salaries were carried in the original act for a part of the officials any way, the important ones.

Senator OVERMAN. For a part of them, not all of them.

Mr. ROBERTS. For the head of the office I think in nearly every case.

Senator NEWLANDS. Yes; and probably you will find that the salaries of some of the subordinates were stated.

Senator OVERMAN. That may be.

Senator NEWLANDS. Congress has determined that these assay offices shall exist at these places. It has determined that there shall be certain officials at them. It has determined that those officials shall have certain salaries, and the implication of course is that the Appropriation Committees will annually appropriate all the moneys that are necessary to conduct those offices in order that they may satisfy the purpose of their existence.

There is but one orderly way of getting the will of Congress regarding the legislation that is now on the statute books and that is either to repeal it or to amend it. What do we find? We find that the department, in the interest of economy and without taking the general welfare of the mining industry into consideration, has recommended annually that these assay offices shall be abandoned.

Now, what is the orderly way of complying with that recommendation? It is to introduce a bill to repeal the existing law. Instead of that we have been compelled practically to submit to the will of but one body, and that is the House, because the Senate has uniformly been against the repeal of the legislation. So we find the law practically annulled by the action of the House, and that annulment is secured through the coercion of the Senate. I say it is time that the Senate should in defense of its own dignity as well as in the maintenance of the law take a firm stand against that position.

Senator OVERMAN. It did last year.

Senator NEWLANDS. It did, but it had to surrender at last.

Senator OVERMAN. No; we have not surrendered.

Senator NEWLANDS. I mean to say it had to yield, in a measure.

Senator OVERMAN. It yielded in the amount of money appropriated.

Senator NEWLANDS. I understand. I am not casting any reflections upon the Senate committee, because under all the circumstances it did the best it could, but it seems to me the fight ought to be renewed. We have this fight now and the Senate ought to take a firm stand. It seems to me the thing to do is to put here in the deficiency bill the amounts that the department says are necessary in order to properly conduct these offices and to insist upon their retention in the bill.

If this matter comes up in an orderly way before the proper committee, for the first time the men in the mining States will be allowed an opportunity to be heard before a committee that is constituted for the purpose of hearing that particular matter. The Committee on Appropriations of course is called upon to make the appropria-

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tions authorized by law. It has nothing whatever to do with the original legislation, of course, upon these subjects. If we can go before the proper committee, then we will have the opportunity to present this matter.

Mr. ROBERTS. The conferees did reach an agreement that the offices should be maintained, and I think it was purely through inadvertence that the appropriations were cut as much as they were. The reduction for the transportation of bullion, I take it, was a matter of pure inadvertence.

Senator NEWLANDS. It may be so, but I assume that the real purpose was to cripple this service.

Mr. ROBERTS. The House intended to abolish the offices.

Senator NEWLANDS. As I said, if these matters should come up before the proper committee, a committee having jurisdiction, the men representing the mining regions would then have an opportunity to present not only the question of economy of administration but also to present the question of meeting a great public want. The National Government has throughout its legislation done certain things in the interest of certain occupations and industries. It has treated the agricultural industry as one that ought to be sustained. It is appropriating millions of dollars annually for educational and experimental work regarding agriculture. The mining industry is one just as important, and it is a more important one in those States.

What we contend is that the consideration addressed to this subject should not be merely as to how the Treasury Department can be most economically administered, but what proper legislation the Congress of the United States should adopt with a view to meet the conveniences and the wants of the great mining industry. Of course, all that could be presented before the Committee on Appropriations, but it would necessarily prolong your hearings. However, there is a side to be presented, and most vigorously presented, on behalf of the mining States. We do not present it to you now or to the entire committee simply because we think that there is an orderly way of presenting it.

Senator OVERMAN. I fully agree with you. I took that position before, as you will remember.

Senator NEWLANDS. I know.

Senator OVERMAN. But the House insisted upon it and we had to reduce the allowance. Now, having succeeded in our fight to hold these offices, the only question is whether we will increase this appropriation, which was a matter of compromise. It seems to me that the Secretary has made a good showing here for increasing the contingent expenses.

Senator NEWLANDS. I think so, and also for the transportation charge.

STATEMENT OF SENATOR THOMAS J. WALSH.

Senator WALSH. Mr. Chairman, I had some correspondence some time ago with Mr. Miller, the assayer in charge at Helena.

Mr. ROBERTS. I have his letter making his bottom estimate of what he could get along with for ordinary contingent expenses. They have given us only $1,000. He has placed $2,200 as the least he can

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get along with. However, I have cut him $200. My estimate is $2,000.

Senator NEWLANDS. I was just contending that these assay offices are authorized by law, that the salaries are fixed by law, and the functions of the officers are fixed by law, and, of course, those laws should not be practically annulled by legislation on an appropriation bill. The orderly way would be to bring in a bill and have it considered by the proper committee, where all parties interested in the measure could be heard.

Senator WALSH. As a surrender of the functions of Government it would be exactly the same as if Congress refused to make an appropriation for the salaries of judges. Of course, the judgeships would still exist, the courts would exist, but you could not do anything. They stand upon exactly the same footing. As you see, these assay offices were established by law, and the law fixes the salaries, and if you do not make provision for them it is simply the same as if you did not make provision for other necessary govermental functions.

Senator NEWLANDS. It is my understanding that the entire people of the mining region regard these assay offices as great aids to convenience in the mining industry.

Senator WALSH. Of course; 40 years' experience has demonstrated their utility and the necessity for them.

Senator OVERMAN. We have one at Salt Lake City, one at Deadwood, S. Dak., one at Boise, one at Helena, and one at Carson. I fully agree with you. The Senate has taken the same position, and by reason of it we have succeeded in holding these offices after a very hard fight lasting for four weeks here. I will ask you if in your opinion we could get along without so many of these assay offices? They are all situated in that particular territory. There is one at Helena and one at Deadwood. How about the one at Deadwood?

Senator WALSH. Of course I do not undertake to speak about the one at Deadwood, but you can readily see how that would operate. Take the assay office at Deadwood. Of course there is no territory tributary to that except the Black Hills. Suppose you abolish the assay office at Deadwood. Every man who goes out and works a little prospect in the hills and establishes a mill there operates it by the cyanide process or amalgamation. He takes his retort, and he has then got to either ship it with the chances of loss to Salt Lake City or to Helena or to some of the other places, or else he has got to sell it to a dealer. The opportunities are not given for testing the fineness and that kind of thing. Naturally it is a loss to him, and it is a discouragement to prospecting and to the development of the mines in that region.

Senator OVERMAN. Is it not the truth that notwithstanding they have this assay office they ship, say, 100 miles, and they would only have to ship it farther?

Senator WALSH. Of course there is this to be said about Deadwood. The Homestake Mine I presume represents perhaps 90 per cent of the output of the Black Hills region, and probably they are fairly well equipped to handle their business and to take care of shipments by express and all that. So I do not undertake to speak of that. I do not know exactly how it is, but take any of these other offices. Take the assay office at Carson City, Nev., for instance. I do not know where those people would go with their dust from their placer

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mines or their retorts or their bullion in case of amalgamation or the cyanide process. The assay office at San Francisco would be of no use to them. They might just as well send to the mint at Philadelphia.

Senator PITTMAN. Another element enters into it, and that is delay in the receipt of returns. I will state simply as an illustration that I was operating a placer proposition in Nevada. It is a placer proposition where there is just a little profit out of it and a man must have a quick return to keep his mine going. The idea is that they can get their bullion turned in on Saturday and get their money back on Monday so that they can keep their crews going. I know other men operating in that country the way I was doing business sent some of their bullion to San Francisco, and they found it very impracticable because it would be a week or 10 days before they got a return, and that made a big difference to them.

Senator WALSH. Of course there is only a right understanding of this matter in the locality, and that is only by reason of the fact that that is the only place where there is any occasion for it.

Senator OVERMAN. We had one in my own State which was abolished. Of course we have a good deal of it in my State and we ship to Philadelphia, 500 miles away.

Senator WALSH. It is not any farther from your State to the mint in Philadelphia than it is between any of the assay offices here. The nearest to us would be Salt Lake City, which is about 450 miles from Helena.

Senator OVERMAN. How about Boise?

Senator WALSH. Boise would be 100 miles farther.

Senator PITTMAN. We have a lot of buildings in most of those places, and the expense of keeping watchmen to watch those buildings would call for an appropriation which would go far in carrying on the office.

ADDITIONAL STATEMENT OF GEORGE E. ROBERTS, DIRECTOR OF THE MINT.

Senator OVERMAN. I think Mr. Roberts has made a good showing and I am inclined to allow his estimate as far as I am concerned.

Mr. ROBERTS. Excuse me, Mr. Chairman, it seems to me that the conference committee agreed that the offices should be maintained, and I take it they supposed that the amount allowed would be enough to maintain them. They seem to have thought that a great economy might be effected. Whatever one may think about the necessity for these offices, and there may be some difference of opinion about that, if they are going to be conducted there ought to be money enough to conduct them properly, and I think there certainly should be an appropriation sufficient to carry them through this fiscal year.

Senator OVERMAN. You have been in favor of abolishing these offices. I should like to have these Senators from mining States hear the reasons why you think they should be abolished.

Mr. ROBERTS. I am perfectly willing to go into that if you think this is the proper time to do it, but really I have never talked with the present Secretary of the Treasury upon the subject, and I do not feel that I am authorized to express the view of the department upon it.

Senator OVERMAN. I will not insist upon it.

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Mr. ROBERTS. The one thing that is before us now is the question of supplying money enough to continue these offices through the present fiscal year. I am trying my best to get that. When the regular appropriation bill comes up next winter for the following fiscal year then the whole question of the policy in regard to these offices would properly come up.

Senator OVERMAN. I see why you should confer with the Secretary of the Treasury because he might have a different opinion in regard to it.

Mr. ROBERTS. He may have. It seems to me that the proper thing to do is to give us the money that is absolutely necessary, if you make the estimate as low as possible, to carry these offices through the present fiscal year.

Senator WALSH. In fact, on examining the rolls at Helena I am surprised at the meager salaries that are paid to maintain that office.

Senator NEWLANDS. They are very small.

Mr. ROBERTS. I think they cut the salaries too low. I have stated that here.

Senator WALSH. An assayer gets $1,800 a year, $150 a month.

STATEMENT OF SENATOR HENRY L. MYERS.

Senator MYERS. Mr. Chairman, I desire to be put on record as being in very hearty accord with Senators Walsh, Newlands, and Pittman in this matter. I am satisfied that these officers ought to be continued. I am very much impressed with what Mr. Roberts has said, that appropriations ought to be made to run through the current year and then at the regular session of Congress next winter the present administration will have an opportunity to consider the policy to be adopted in regard to them. This administration was not in power a year ago when the attempt was made to cut them off. I think the appropriations ought to be made for the full year and then let the administration go on record. The offices ought to be permitted to have sufficient funds to run until the end of the fiscal year without being crippled in their work.

I know that in Montana this is a matter of very great importance, and I assume it is equally so in Idaho, Utah, Nevada, and other mining States. It would be a very great handicap to the mining men of Montana to be deprived of their assay office. I hope that the appropriation will be rounded out at least for the current year.

Senator OVERMAN. We are very much obliged to you, gentlemen.

GENERAL LAND OFFICE.

STATEMENTS OF JOHN M'PHAUL, ACTING ASSISTANT COMMISSIONER, AND FREDERIC NEWBURGH, CHIEF OF THE DIVISION OF ACCOUNTS, GENERAL LAND OFFICE.

Mr. MCPHAUL. Mr. Chairman, owing to the absence of the commissioner, on duty in the West, and the assistant commissioner, who was called away for a couple of days, the summons of your committee comes at a time when I am the sole representative of the office to act

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for it. I wish you could have had the benefit of the personal presence of Mr. Tallman, the commissioner. You probably know the assistant commissioner, Mr. Bruce, from Virginia, not very far from North Carolina.

Senator OVERMAN. I confess I do not know either of them.

Mr. MCPHAUL. Now, to be specific, June 6, 1912, Congress passed what is known as the three years' homestead law. To eastern Members the matter is not so suggestive, but the western Members know the work it will cast on a bureau like the Land Office to change an important law like the homestead law, permitting the many thousands of homesteaders to offer proof within three years instead of five, and how it congests the work.

As I said, the law was passed June 6, 1912. Congress recognized that it would be necessary to afford the Land Office some measure of relief, and provided for 24 temporary clerks. That was done at the last session of Congress. The former commissioner probably believing that the work would gradually diminish did not make any recommendation for the continuation of the 24 clerks. The result is that Congress taking the Land Department at its word appropriated for the number of people it had recommended.

The new administration comes in and finds that instead of the office keeping up with its work it is continually falling in arrears, and that instead of letting 24 clerks go we need all of them. In the last two months of the last fiscal year with those 24 clerks we fell behind. Now, Mr. Tallman, is embarrassed by the fact that with these proofs rapidly accumulating in the office the force has been diminished by the 24 temporary people, and he can not possibly spare from other duties a sufficient number of clerks to do this work.

It is a very serious matter to a poor fellow struggling for a home in the West to have his papers held up for six months or nine months or a year. He needs to borrow money; he needs credit, and that he can not get very well until he has received the evidence of his title—his patent. When those people offer proof and those proofs are received in the General Land Office in Washington, they do not take kindly to a delay of nine months in the adjudication of their claims.

Congress ought to provide sufficient force for the office to do the business of those people. It provided that they could go on the public land and they have established their homes there and most of them are honest. They have submitted their proofs and they are entitled to patents; the Government should take care of them.

Mr. Tallman, in a communication later than the estimate made here, thinks that it would be better, instead of furnishing him the seven clerks that were estimated for by him, that your committee authorize the expenditure of $10,000, which would enable him to employ 12 stenographers. That is a class of work requiring much correspondence. A large number of clerks are employed in communicating with the people who have submitted proofs and the stenographers would be more useful than the seven clerks officially called for.

But if your committee does not see its way clear to provide for the stenographers, I ask that we be given the seven clerks called for in this estimate, two at $1,400, two at $1,200, two at $1,000, and one at $900. These clerks should be appointed under the civil-service rules, and there would be no question of favor or anything about it. We

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want people to do the work, and the salaries, you will observe, are low, because the class of work they will be engaged upon is not the highest class of work.

Senator PERKINS. Why did not the House committee include these in the deficiency bill?

Mr. MCPHAUL. The House committee would not do it. The assistant commissioner, Mr. Bruce, Mr. Newburgh, and myself appeared before the committee and I thought we made it clear to the committee that we ought to have the clerks, but we did not succeed in getting the appropriation.

Senator PERKINS. You know that we have to go into conference with the House, and if we follow your suggestion we will have a fight there.

Mr. MCPHAUL. I know that, Senator, and I want to make this suggestion. We want your assistance in getting the item in the bill, and in keeping it there. We feel more confident when we can appeal to some one who understands the conditions in the western country, and who appreciates the hardships that will result if these struggling home makers are delayed in securing their patents.

Senator OVERMAN. How much is the work behind?

Mr. MCPHAUL. Mr. Newburgh will answer, for he has a detailed statement.

Senator PERKINS. A detailed statement is very much better than anything else.

Senator OVERMAN. Have you written a letter to the committee about it?

Mr. NEWBURGH. Here is a copy of a letter written by Mr. Tallman to Senator Walsh. I do not know whether Senator Walsh is a member of this committee or not.

Senator OVERMAN. He is not.

Mr. MCPHAUL. I presume it was written to Senator Walsh because the commissioner is acquainted with him. It sets forth in detail the reasons for asking for this increase.

Senator OVERMAN. You can send it to the committee.

Mr. MCPHAUL. Yes, sir; I would be glad to do so.

Mr. NEWBURGH. There is a very small item to which I wish to call your attention. There was an unexpended balance of the appropriation for temporary employees June 30 last. It was not really available until the end of August, because, as you remember, the appropriation bill for 1913 did not get through until August 24, and it was about the 1st of October, three months, before the men were employed under that appropriation bill. At the end of the last fiscal year there was $7,480.88 unexpended, in effect $7,500. What the commissioner has asked for and his purpose in writing the letter is that he be given not $8,100 but $10,000, which is really only $2,500 more than the unexpended balance. If you think it more satisfactory, we will simply write a letter to the committee.

Senator OVERMAN. We have your statement, and you also can send a letter.

Mr. NEWBURGH. I have here a detailed statement of the work of the General Land Office, which I submit to the subcommittee.

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(The statement was ordered to be printed, and it is as follows:)

Work report of the General Land Office.

	Work pending.		Work performed.	
	June 30, 1912.	June 30, 1913.	Jan. 1 to June 30, 1912.	Jan. 1 to June 30, 1913.
	Number.	*Number.*	*Number.*	*Number.*
Cases approved for patent	1,087	2,935	41,834	38,130
Final entries	10,207	9,989	37,187	34,712
Original entries	387,555	408,434	31,304	32,787
Public-land claims	2,483	2,344	22	152
Selections, other than register and receiver, State, and school	193	314	103	202
Applications for second entry	.....	.....	417	271
Applications to amend entries and filings	1	.....	1,905	1,346
Applications to amend patent	37	15	301	327
Applications sale of isolated tracts	.....	.....	3,537	2,333
Applications to contest	92	124	54	65
Applications under act of June 11, 1906	1,404	532	382	1,428
Applications rights of way, maps, etc	624	840	586	739
Declaratory statements, reservoir	54	62	213	147
Declaratory statements, coal	1,581	1,671	45	58
Scrip, soldiers' additional and warrant locations	686	674	706	368
Cash, graduation cash, credit system	44	27	316	449
Appeal cases from register and receiver	3,650	2,448	3,248	3,559
Unappealed cases	245	445	3,366	5,017
Motions for review, rehearings, etc	33	59	210	155
Deputy surveyors' returns	196	146	181	131
Reports of special agents	629	834	5,565	5,605
Timber trespass cases	283	382	197	198
Unlawful inclosures	388	376	111	73
Fraudulent-entry cases	20,417	22,709	10,824	8,524
Foresters' reports	16	80	810	509
Maps, drafting	8	6	4	.....
Repayment claims	652	395	2,411	1,551
Monthly returns, posted	126	192	638	622
Number of entries, filings, etc., posted	.....	.....	187,833	222,565
Certified copies of patent furnished	.....	.....	13,030	13,834
Pages of certified copies of papers written	.....	.....	20,374	18,169
Blue prints furnished	.....	.....	7,264	7,435
Photolithographs furnished	.....	.....	9,562	10,978
Other copies and compilations furnished	.....	.....	1,778	1,929
New photolithographs	.....	.....	989	1,593
Forest cases acted upon	.....	.....	218	242
Rights of way, examining status, maps	.....	.....	278	317
Entries of status of surveys	.....	.....	721	663
Maps mounted	.....	.....	1,504	1,599
Maps, State distributed	.....	.....	4,577	3,697
	432,691	456,033	394,605	422,479
	Acres.	*Acres.*	*Acres.*	*Acres.*
Railroad selections	3,261,449.25	2,975,955.47	30,108.29	334,197.99
School selections	1,877,077.08	1,736,840.34	95,778.13	291,781.90
State selections	1,472,465.03	2,083,344.14	500,125.10	262,974.20
Swamp, place claims	458,444.59	434,110.21	33,629.13	24,392.49
Swamp-lands indemnity	1,500,244.62	1,500,255.62	.....	.....
Carey Act withdrawals	1,357,782.08	413,232.71	607,423.75	931,612.61
	9,927,462.65	9,143,738.49	1,267,064.40	1,844,959.19
Withdrawals posted:				
For reservations (forest)	.....	.....	89,754.00	218,205.00
For reclamation purposes	.....	.....	43,450.00	251,920.00
For other purposes	.....	.....	215,856.00	31,234.70
Area examined for status (forest)	.....	.....	1,637,310.00	2,442,677.00
	.....	.....	1,986,370.00	2,944,036.70
Cash receipts earned:				
Copying fees, etc	.....	.....	$21,742.30	$10,525.91
Sales of land	.....	.....	550.00	6,537.56
Depredations on the public lands	.....	.....	22,980.62	12,099.23
	.....	.....	45,272.92	29,162.70

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Mr. McPHAUL. If you will permit me, I wish to refer to one paragraph in the commissioner's letter. The correspondence section dealing principally with this homestead situation, since July 1, 1913, has fallen in arrears 1,602 letters. That many letters have accumulated in that one section. It is the policy of the office, and I think Senators will agree with it, that correspondence should be answered within a day or two. A person writes to the office to find out the status of his claim or makes inquiries with respect thereto, and it is our policy to answer within 24 hours if we can.

Senator OVERMAN. How many stenographers have you now?

Mr. McPHAUL. Scattered throughout the office we have probably about 50.

Senator OVERMAN. How many letters do you get a day?

Mr. McPHAUL. The stenographers attend to more than the mere correspondence. There are only eight engaged on correspondence. They take the dictation of the law writers and the other adjudicators and all the other work of the office usually done by stenographers as well as the correspondence. That is only one of the rather lighter duties of the stenographers.

Senator OVERMAN. You have eight?

Mr. McPHAUL. We have eight engaged on that work, and we need to increase the stenographic force employed in the correspondence section. The law section is often hampered by lack of stenographic force.

Senator MYERS. Mr. Chairman, at Mr. Tallman's request I offered an amendment to the appropriation bill to-day proposing to appropriate $10,000 for this purpose. I have a letter from Mr. Tallman giving reasons and facts and statistics. I have it not with me now, because I did not know the matter was coming up. Senator Walsh asked me to come along with him on the assay business. I should like to read Mr. Tallman's letter and appear and make some argument in behalf of my amendment, because I am strongly impressed with the importance and the need of it. Mr. Tallman has talked the matter over with me. I should like to know when I can be heard for a few minutes.

Senator OVERMAN. You can be heard right now.

Senator MYERS. I would have to go over to my office and get the letter. I was not expecting that this matter would come up to-day.

Senator OVERMAN. We will be glad to have you appear whenever it suits your convenience.

Senator MYERS. I want to suit your convenience.

Senator OVERMAN. Mr. McPhaul, here is an estimate from the department amounting to $50,000.

Mr. McPHAUL. That was not for the General Land Office.

Senator OVERMAN. Do you know anything about that?

Mr. McPHAUL. I think you ought to make the appropriation. I know something about the conditions, but of course I could not speak for the Secretary's office.

Senator OVERMAN. You are not authorized to speak for it?

Mr. McPHAUL. I am not authorized to speak for it except to express my personal opinion that Congress really ought to provide for that force. Senator Myers ought to know something about that.

Senator MYERS. Oh, yes.

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Mr. McPHAUL. Our embarrassment before the House committee was that there was not a single Member of that committee who was from anywhere in the neighborhood of the West. I made the point that Congress, having been in continuous session for almost three years, it increased the work of our office. Senator Myers knows, as I know, and he will vouch for the statement, that when he is here in Washington he receives about ten times as many letters in regard to public-land business as he would receive if he were at his home.

Senator OVERMAN. The law compels you to get rid of these cases in three years.

Mr. McPHAUL. Yes, sir, under what is known as the three-years homestead law. Before that the homesteader had five years. He was required to live on his land for five years. In 1912 Congress passed an act which permitted them to make proof in three years. That increased the work incident to homestead entries about 300 per cent. It threw three years' work on us at one time. Congress provided 24 clerks, as I said, for a period of 10 months. The sundry civil appropriation bill did not pass until August 24.

Then, again, there is more work to be done. Senator Myers can vouch for the correspondence growing out of the act of 1909, providing for the separation of surface rights and coal deposits, and the act of 1910, making a somewhat similar provision. Homesteaders write to the office to find out about those acts. They want to know when they have the right to elect to take a limited patent and when they can take an unlimited patent. It has been said that we could not be held responsible, for Congress has not given us the force, but it is the business of the office to serve the people, and it is up to Congress to furnish us the money to do it with. The former commissioner was under the impression in the autumn of 1912, when his estimates were prepared, that the work would diminish.

Senator OVERMAN. He seemed to think that his estimate was sufficient?

Mr. McPHAUL. Yes. He thought it would work out, but it did not. We will really need more than these 10 clerks. We need more now. We realize the embarrassment in putting it on the deficiency bill.

Senator OVERMAN. There are two western men on this committee.

Mr. McPHAUL. And that is the reason why I feel so confident. I think you know about the conditions in the West, too.

Senator OVERMAN. I confess my ignorance. What position do you hold?

Mr. McPHAUL. I am a chief of division detailed to the Board of Law Review; I have been designated by the Secretary of the Interior to act as assistant commissioner, and owing to the temporary absence of the commissioner and the assistant commissioner, I am in charge of the office.

(At 4 o'clock and 30 minutes p. m. the subcommittee adjourned until to-morrow, Tuesday, September 23, 1913, at 10.30 o'clock a. m.)

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TUESDAY, SEPTEMBER 23, 1913.

The subcommittee met at 10.30 o'clock a. m.

Present: Senators Overman (acting chairman), Bryan, and Perkins.

STATEMENT OF SENATOR HENRY L. MYERS.

ADDITIONAL CLERKS, GENERAL LAND OFFICE.

Senator MYERS. Mr. Chairman, to begin with, I wish to make a brief statement in behalf of my amendment introduced yesterday, at the request of the Interior Department, for $10,000 for 12 additional clerks in the General Land Office. I offered the amendment at the request of Commissioner Tallman. He selected me, I presume, because I have the honor to be chairman of the Senate Committee on Public Lands. He drew the amendment himself, and in transmitting it he wrote me the following letter:

SEPTEMBER 17, 1913.

Hon. HENRY L. MYERS, *United States Senate.*

MY DEAR SENATOR: House Document No. 145, Sixty-third Congress, first session, is an estimate for the appropriation of $8,100 to pay the salaries of seven additional clerks in the General Land Office during the fiscal year ending June 30, 1914. The purpose of this item was to secure additional stenographers. The House Committee on Appropriations failed to enumerate the item in the deficiency bill, which is now before the Senate.

Permit me to solicit your personal interest to the end that this item may be replaced in the deficiency bill or, preferably and in lieu thereof, the insertion of a similar item providing an appropriation for $10,000 for salaries of 12 temporary stenographers for the fiscal year ending June 30, 1914. I think that sufficient capable stenographers may be secured at salaries of $1,000 each per annum, wherefor an appropriation of $10,000 will enable me to employ 12 employees for 10 months, all of whom will be selected from the civil-service register of eligible stenographers and typewriters.

Last year an appropriation was made for 24 temporary clerks whose terms expired by limitation on June 30, 1913. This appropriation was made because of the extra work anticipated by reason of the so-called three-year homestead law of June 6, 1912 (37 Stat., 123). It was apparently considered at that time that this extra work would be completed by the end of the fiscal year just past, but such is, in no sense, the case; and for this reason, together with the many withdrawals and eliminations, the difficulties and correspondence incident to the adjudication of cases is heavily increased and the disposition of such cases thereby delayed.

In a number of instances I find law examiners in this office with their notes prepared ready for the writing of decisions, but without stenographers available to get out the work. I am bending every effort to hasten the disposition of pending cases in this office, but find myself seriously handicapped because of an absence of sufficient stenographers.

The increase in the volume of the correspondence section of the Homestead Division, excluding the work of the certified copy clerks, is shown by the following tabular statement of letters, covering the first six months of the years 1912 and 1913, respectively:

	1912	1913
January	2,608	3,583
February	1,985	3,276
March	2,112	3,691
April	2,260	2,641
May	2,109	3,033
June	1,842	2,547
	12,916	18,771

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This statement shows an increase amounting to over 45 per cent in the work to be done with a force materially reduced in number. The correspondence section since July 1, 1913, has fallen in arrears between 1,600 and 2,000 letters, which should have been answered within a day or two of their receipt, and this arrearage is increasing rapidly in spite of the fact that some of the adjudicating clerks, whose services should be given entirely to cases, have been partly transferred to correspondence and stenographic work because they were competent along these lines also, and two correspondence clerks, being good typewriters, are required to typewrite their own letters, thus reducing their output of correspondence from 125 to 160 letters a week to 65 to 90 letters per week. Prior to July 1, eight rapid stenographers were kept busy by the correspondence clerks of the section referred to.

On July 15, 1913, the original estimate for seven additional clerks, ranging in salaries from $900 to $1,400 per annum, was submitted, and this estimate was the minimum for 12 months' work, but nearly two months have since passed and the accumulation of unadjudicated cases since July 15, 1913, shows that the employment of at least 12 additional stenographers for the remaining 10 months of the year will be a practical administrative necessity.

When I submitted this item for insertion in the deficiency appropriation bill, it was after due consideration, and to meet the plain business necessities for the proper conduct of the work in this office. The amount requested is comparatively small, and compared with the benefits to public-land entrymen and others doing business with this office, is, I think, insignificant. You are well aware of the common complaint of delays in the handling of business in this office. Knowing your large interest in the work of this office as it materially affects settlers and development in all of the public-land States, I am calling your personal attention to this matter, with a view to procuring your support and cooperation to the end that this item may be reinserted in the deficiency appropriation bill, now pending before the Senate.

Very respectfully,

CLAY TALLMAN, *Commissioner*.

Senator OVERMAN. Under the last administration the Secretary of the Interior made an estimate for the legislative appropriation bill. This is what is known as the urgent deficiency bill. The department asked us for 504 clerks and we allowed them 503. There was an estimate of what they said they needed to carry out the homestead bill, and we gave them $250,000.

Senator PERKINS. This is a deficiency bill.

Senator OVERMAN. That is the trouble; this is a deficiency bill. I want to call your attention to these facts, Senator, so as to acquaint you with them, and then we want to hear from you.

As I say, the Secretary estimated for 504 clerks, and we gave him 503; and besides that, we gave the department $250,000 before. That was in the legislative appropriation bill for 1914. I wonder if they can not get along until the regular appropriation bill is passed?

If we begin to make appropriations in an urgent deficiency bill, I do not see where it will end. That is the point to which I want to call attention. This is not a deficiency appropriation.

Senator MYERS. In regard to that, I will say that the estimate of the last administration as to what would be necessary on account of the new homestead law and the extra work involved was purely an advance estimate. It was an estimate pure and simple, in the true significance of the word. In other words, it could be only a surmise, a guess, as to how much extra work the new law would bring on. The subsequent facts and developments plainly show, I think beyond controversy, that that estimate was erroneous—that it was too little. That was a bona fide, honest estimate, to the best of the ability of the estimators. The estimators, however, have gone out of office and the people who actually have the work to do have come onto the job. They find by actual experience that the estimators were mis-

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taken and that they underestimated the proposition. That is the only reply we can make to that.

Senator OVERMAN. This is the first time I ever knew a department to underestimate anything.

Senator MYERS. This is what is shown by actual experience. Nobody knew how much extra work the new law would make.

Senator OVERMAN. I am not opposing the amendment; but the time will soon come when we can consider this matter in the regular appropriation bill.

Senator MYERS. Yes.

Senator OVERMAN. The question in our minds is whether or not this ought to be done now, as this bill is to supply deficiencies.

Senator MYERS. Yes; I see. We feel that this is an emergency.

Senator PERKINS. The department has 75 per cent of the appropriation on hand at this time.

Senator MYERS. Yes; but, you see, that is plainly going to be exhausted and will not keep up with the work. They will use it, of course, and do the best they can with it, but they are not going to be able to keep up with the work.

Senator PERKINS. I think we are in full accord with the department's recommendation, but the question is whether or not the item should go in this bill.

Senator MYERS. I introduced this amendment at the request of Mr. Tallman, as chairman of the Public Lands Committee of the Senate. He requested me to introduce it, convinced me of its merit, and I promised to do so.

Senator BRYAN. There is one thing about it that I do not understand. In Mr. Tallman's letter he asks for $8,100, and your amendment asks for $10,000.

Senator MYERS. His letter, which I read, says that he would prefer $10,000.

Senator ASHURST. The letter asked for $8,100.

Senator MYERS. The estimate that he made was $8,100.

Senator BRYAN. But he wanted 7 clerks. This is for 24 stenographers and clerks.

Senator MYERS. Yes; he wants 12 now, at an expense of $10,000, for the remaining 10 months. Mr. Tallman tells me that not infrequently he is at his desk until midnight, mapping out the work, going over the correspondence, and trying to systematize things so as to keep up; that no expenditure of time or labor is too great for him to undertake to expedite the work as much as possible in systematizing and supervising, but, of course, he can not require stenographers and clerks under the civil service to keep those hours. The law and rules and regulations bar that. He can not keep his clerks there at that unseemly hour, but I know that he is working very hard.

I had quite a talk with Secretary Lane before he went West, about the middle of July, in which he very earnestly told me that it was absolutely impossible, with the force at hand, even to keep up with the work—that is, to keep it up in so far as it is up, within the stated distance of time in which it ought to be performed. That is, he can not even keep it up to the present standard. He said it was inevitably lapsing and falling farther and farther behind. He was very

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eager and earnest in his desire to bring the work up to date and discharge it all promptly, but he said he could not do it.

There is a man—Secretary Lane—who I think has worked himself onto a sick bed. He has overworked himself. He has simply broken himself down with work, and he is sick to-day as the result of overwork. He encroached on his hours of rest and sleep before he left here. He told me that he was working harder than he had ever worked before in his life. He has evidently kept that up to the point of exhaustion; but he can not require or compel the employees to do the same thing, nor would it be advisable. While he did not request of me to introduce a bill or an amendment at that time—in fact, I did not have the honor of being the chairman of the Public Lands Committee at that time, I was simply a member, and he was talking to me about it—he indicated very plainly that when he came back from his trip he intended to take some measures to try to procure more help. He said he simply must have it or the work would suffer.

I look at this matter in a practical way, a good deal like this: Mr. Lane and Mr. Tallman have been put in these positions, and they are there; they are on the jobs. They know better than anybody else or any of us, what is necessary, if they are straightforward and honorable men, which, of course, we all deem them to be. If they are willfully asking here for something that is not proper and just, then they are not the kind of men we think they are, not the kind of men the President thought they were when he appointed them. They would be jobbers and grafters. Of course, nobody entertains any such thought as that. If they are competent men, and understand their jobs, and if they are honorable men and the kind of men President Wilson thought they were when he appointed them, correct in their intentions and integrity, and competent to handle these jobs and do the work, then, when they come to us and simply say that the public service must suffer unless something is done, it seems to me it ought to carry very grea credence and weight.

Senator PERKINS. I think we are in full accord with your recommendations. The only question is whether the item ought to come in here or not.

Senator MYERS. I recognize that that is the question.

Senator PERKINS. As the chairman has indicated, we are in full sympathy with your recommendation.

Senator OVERMAN. We are in sympathy with it. The only question in our minds is as to whether or not this would properly come in a deficiency bill.

Senator MYERS. If the public service is suffering, is not that an emergency?

Senator OVERMAN. But this is what is known as a deficiency bill. The department make estimates, and then, when the estimates fail to cover the necessary expenditures, they come to us for a deficiency appropriation.

Senator MYERS. This is an urgency deficiency bill.

Senator OVERMAN. You see, only three months of this fiscal year have elapsed.

Senator MYERS. Yes.

Senator OVERMAN. And we will pass the new legislative appropriation bill here, I hope, by February.

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Senator MYERS. But that can not take effect until the 1st of next July.

Senator OVERMAN. That is true.

Senator MYERS. This is for the balance of this year.

Senator OVERMAN. But if we appropriate in the next bill, they can anticipate.

Senator PERKINS. We could make the appropriation immediately available.

Senator OVERMAN. Yes.

Senator MYERS. You could make it immediately available, that is true. There is evidently going to be a deficiency in the performance of the public service, however, if they do not get some help somewhere. I speak about the matter earnestly because I have been brought into contact with these circumstances, and they have been impressed upon me so forcibly that I feel very great interest in the matter, and feel strongly its urgency.

Senator PERKINS. And you indorse it, too?

Senator MYERS. Yes; I very heartily indorse the proposition. I did that, of course, by offering the amendment. I should not have offered the amendment if I had not been forcibly impressed with the very great need of it. Speaking personally, from my experience with the Interior Department in a business way, I know as a matter of fact that it is very much behind with its work, and that fact gives rise to great complaint.

Senator OVERMAN. Senator, you said that the departments could not work their clerks overtime. The law allows them to work the clerks overtime when they are behind.

Senator MYERS. I should imagine it would be very difficult to force the clerks in great numbers to work overtime, even if they were paid for it. I do not know much about it, but I should not think it would be feasible to cause an army of clerks to come back at night. If it were done against their will, they probably would not accomplish very much, anyway. I should think it would be a tremendous undertaking. The rules and regulations, as I understand, fix the office hours, and that is about all you can expect of them, I should judge, except in the case of the heads of departments. They can come back and work until midnight if they want to. I guess Mr. Jones and Mr. Tillman and Secretary Lane often do that. From what they tell me, they are not particular about their hours. But as for these clerks, I presume it would be a pretty hard job to force much work out of them after hours.

I know there is very great disappointment and dissatisfaction all over the West about the delay in these matters. Poor men have contests over their homesteads, and it often takes two or three years to get them heard from. They can not understand it, and they simply deluge us with correspondence and letters asking why this is, and why this is not done, and please to go to the department to hurry up this matter, etc. I know that the department is very far behind, without any fault on the part of the department. While it would be an exception to the rule, of course, to do this—I concede that—it seems to me the exigency of the occasion is such that it would be worth while to make an exception to the rule. There must be exceptions to all rules in cases of very great necessity, and it seems to me that this is a case where the supreme necessity that exists would justify you in making an exception to the rule.

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I do not want to talk too long about this matter. I think I have expressed in a nutshell—or perhaps not in a nutshell, either—my views about the matter, what I know about it, and why I have offered the amendment. If I should talk for hours I probably could not make it any more forcible or add to it. That is my view of the matter, and that is where I stand.

Now, I should like to have Senator Ashurst and Assistant Secretary Jones heard from.

STATEMENT OF SENATOR HENRY F. ASHURST.

ADDITIONAL CLERKS, GENERAL LAND OFFICE.

Senator ASHURST. Mr. Chairman and honorable Senators, it would be impossible for me to say more in view of the very succinct statement made by Senator Myers. I do not speak on behalf of the department so much as I do on behalf of about 12 States. It is impossible to overemphasize or exaggerate the abuses that have obtained in years past in the Interior Department. I mean no criticism upon the officials of the department; but we have not afforded them the necessary facilities to do the work demanded of them. At the present time thousands of homesteaders are held in abeyance. They are unable to borrow money to improve their homesteads, they are unable to proceed to patent, because of the red tape and the "ping-ponging" of the matter backward and forward.

If you will permit an illustration, a man makes a homestead entry. He is required, in order to get title to that little isolated tract of land, to run a gantlet more severe than if he were trying to prove a will bequeathing a billion dollars. The proof required is more severe and more strict than would be required in probating the will of an extremely rich man.

A man seeks to file a homestead entry. He is told that he may not file it until the Geological Survey sees whether there is any coal or iron or mineral in the land, and he is "ping-ponged" for a year. Then he is told that he must wait until they ascertain if it may not be liable to be used for a reclamation project in the future, and he is "ping-ponged" another year, and so on down the line, until by the time he acquires his title his patience is exhausted and all the satisfaction that comes from acquiring a piece of public land is taken from him.

In my judgment, unless these clerks can be afforded to the department, great delay and serious inconvenience will occur, and the resentment of thousands of homesteaders will arise because of the fact that a delay will occur which in my judgment might have been obviated.

Senator OVERMAN. Senator, if you will excuse me a minute, as this matter has come up, I wish to call Senator Myer's attention to it, and I should like to have it go in the record. I referred to the law as to working clerks overtime. Section 7 of the act of March 15, 1898, reads as follows:

Hereafter it shall be the duty of the head of each executive department to require monthly reports to be made to him as to the condition of the public business in the several bureaus or offices of his Department at Washington; and in each case where such reports disclose that the public business is in arrears, the head of the department

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in which such arrears exist shall require, as provided herein, an extension of the hours of service of such clerks or employees as may be necessary to bring up such arrears of the public business.

I just want to call attention to that, and I want to get it in the record.

Senator ASHURST. Yes; certainly. As to working overtime, I trust the committee will pardon me for saying that if I were the head of a department and found a man working a clerk overtime I would discharge him. I would not permit such a thing, for this reason: The man who gives to the Government 8 or 10 hours a day of honest, faithful service for $80 a month ought not to be required to work overtime. The poor stenographer who is bending over a desk, working 8 or 10 hours a day, for $80 a month, I would never think of asking to work overtime. I am sorry there is such a law. There ought not to be any such law.

Senator OVERMAN. Do you not suppose a good many of them would be willing to do that when they get extra pay for it?

Senator ASHURST. I am not in favor of any law that allows the Government of the United States to accept bounties. This is a great Government and a rich Government.

Senator BRYAN. What bounty is it, if they pay for it?

Senator ASHURST. The bounty is this: It is contrary to public policy to overwork men. It is contrary to public policy to require overtime work in any department of life.

That is all I have to say on the subject.

Senator OVERMAN. I was satisfied that the Secretary did not know of that law, and I wanted to put it in the record so that he could know of it. The Assistant Secretary is here, and the reason I call attention to it is because I want the head of the department coming in now to know that there is such a law. As to the policy, that is another thing.

Senator ASHURST. Yes; the policy is another thing. I earnestly hope no department of the Government will start up the policy of overworking its employees and working them overtime. It ought not to be done.

In conclusion I will simply say that I have no personal interest whatever in the matter, but I hope the honorable committee may see fit to incorporate this small appropriation in the bill. It is $10,000. That is a large sum, it is true. But, my dear Senators, you will not only facilitate the work of the Department of the Interior, but over and above and beyond that you will facilitate thousands of people who are trying to get next to the soil, thousands of people who are trying to build up homes, thousands of people who are trying to convert the desert and the mountain and the glen into places where there may be happy homes, and where there may be truck farming and gardening and fields of waving grain. You will facilitate thousands of people and assist them in doing what they are trying to do—to make good citizens of themselves, producers instead of consumers—in order that they may turn into the general market garden truck and grain, and thereby lower the cost of living By the way, in my judgment that is one of the true ways to decrease the cost of living—to increase the production of food products.

Senator OVERMAN. I should like to hear you on this subject, Senator: The legislative appropriation bill took effect on the 1st of July.

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The department estimated for 504 clerks, and we gave them 503. Only about three months of the time has gone by. There may be a deficiency at the end of this fiscal year, which then we could put on. We do not know about that now. But a deficiency has not arisen up to this time. That is the point with us. This is a deficiency bill.

Senator ASHURST. It seems to me that this is the appropriate bill for it if this is the deficiency bill, because here is a deficiency.

Senator OVERMAN. There is a deficiency in money appropriated where they have not had enough money for carrying out their work for the year.

Senator ASHURST. It seems to me this is the exact situation, then, because they have not enough money to pay the clerks to do this work. Here is a deficiency created. They need 10 stenographers. I was down there the other day, and I met Judge Proudfit. I do not know that I ought to mention a personal conversation, but he is a very capable man, who has been in the department 20 years. Opinions are ready; the law examiners have made up their minds, and they know how they are going to decide these matters, but they simply lack the stenographers to do the work.

I have no more to say. I feel that I am trespassing in taking so much time.

Senator OVERMAN. No; we are glad to hear you, Senator.

Senator ASHURST. That is about all I have to say. I earnestly hope that this item may be put on the proper bill, and it seems to me this is the proper bill.

Senator PERKINS. Was this request presented to the House of Representatives?

Senator ASHURST. I did not present any request to the House of Representatives, my dear Senator.

Senator OVERMAN. Oh, yes; it was presented.

Senator MYERS. It was presented and turned down; that is true; but I think the House turns down a great many things.

Senator ASHURST. I have no right to speak of the House, because it is a coordinate branch of the Government; but the mere declination to pay out public money is not statesmanship. It is not statesmanship simply to close your fist and say: "I will not pay out public money." If we pay out a million dollars of public money—aye, sirs, if we pay out a billion dollars of public money—honestly, fairly, and in good faith, and thereby accelerate the true interests of this country, in my judgment we are just as much statesmen as if we sit here and cripple the public service by not paying out enough.

Senator OVERMAN. Senator, you must consider that this is the Department of the Interior. Suppose the Navy Department and the War Department and the Department of Labor and others should come up here and say, "We need more clerks," as they do every time they come before us, we would have, really, to make a legislative appropriation bill. It is a question whether or not we can include the item in this bill—not as to the merits of the matter; I agree with you as to the merits of it. You have made a very forceful presentation of that phase of the matter.

Senator ASHURST. Senator, we are wasting $1,000,000 every day; every time the sun goes down we have wasted a million dollars, because we have not taken hold of these great things, and have not given enough money to the administrators of the law to carry out

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the purposes of the Federal Government. We waste a million dollars a day.

Senator OVERMAN. How, I should like to know?

Senator ASHURST. In indirection; in "ping-ponging"; in red tape. If we went at it directly, as the board of directors of a great railroad company would do, we would prevent this waste.

Senator OVERMAN. Would they not have the red tape just the same?

Senator ASHURST. I do not think so. It is not our fault. It is the fault of the system that has grown up.

Senator OVERMAN. It is a question of the system up there, probably, but we can not go back of that. That must be governed by the Secretary of the Interior and his rules and regulations.

Senator ASHURST. If you will permit me to suggest it, it is red tape when we say, "This is a deficiency appropriation bill. You are asking for an appropriation, but it can not go on this bill because technically it belongs on another bill."

Senator OVERMAN. The "ping-ponging" is up there.

Senator ASHURST. I thank the committee for its courtesy. I have nothing more to say.

Senator OVERMAN. We are very much obliged. We are glad to hear about these things.

Senator ASHURST. Let me say just one word further. The new homestead law has occasioned a great many of these extra employees. There has already passed the Senate, and there will pass the House, a bill which provides that in the future, in lieu of residence, expenditure of money shall be accepted as proof of homestead. That will occasion an enormous amount of labor. Thousands of fallow acres, thousands of acres of desert, will come under reclamation and become places where there will grow fruits and all that sort of thing. That alone will occasion the employment of some extra clerks, in my judgment.

I thank you.

Senator MYERS. Mr. Chairman, I should like to have Assistant Secretary Jones, the Acting Secretary of the Interior, heard now.

Senator OVERMAN. Yes; we shall be very glad to hear him.

STATEMENT OF A. A. JONES, FIRST ASSISTANT SECRETARY OF THE INTERIOR.

Mr. JONES. Mr. Chairman, the matter which has been referred to by the two Senators who have spoken is one of importance. As stated by them, it is just a question as to whether or not the business in the General Land Office shall be kept up to date. That is the question that confronts the committee. It can not be done without additional help.

I do not believe this provision in the act of 1898 about working overtime should be made applicable to that situation. I am sure the committee would be surprised if it really knew the number of employees who actually work overtime now. In other words, in the department we really do not consider any specific hour for adjournment; and a more conscientious lot of employees I never saw anywhere.

The question of hours does not govern. It is simply a question of ability to do the work; but there is a limit to human endurance. In

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my own office the people around there with whom I am in daily contact do not hesitate to remain until 6 or 7 o'clock in the evening, to come back at night, and to work on Sundays—anything to help along. The spirit of endeavor there is something remarkable, but there is not a sufficient number of them to do the work.

In the Land Office the work is behind for just the reason stated by the Senators. With the number of employees there, it is an impossibility to keep up the work. You can readily see that if the work gets behind it increases, because daily letters are coming in making inquiry. People want to know about the cases that are pending in the General Land Office, and it is necessary to detail some one to look up the matter and give the necessary information; whereas if the work were kept up there would not be a necessity for writing these letters, which, by the way, are numerous. It is not a question of one or a dozen or a hundred letters, but they run up into the thousands. They are coming along every day, making inquiry about these cases whenever there is delay, and it is necessary to give them the information for which they ask. The Government owes it to them to keep them informed about these matters which are of such vital interest to them.

These few clerks in the Land Office, I am sure, would help the department in a very great measure, and would enable it to give more satisfactory service to the people whose all is involved in these proceedings. I hope the committee will see its way clear to grant them.

Senator OWEN. How long would you want these clerks?

Mr. JONES. The commissioner estimates that he will want them for the remainder of the year. Of course when we come to the general appropriation bill for next year he will expect to ask for the additional number. It is necessary to have them as a permanent addition to the force. He wants them provided for now for the remainder of the year. It is my judgment that it is very important that we should have them.

Senator OVERMAN. Who is the Commissioner of the General Land Office now?

Mr. JONES. Mr. Tallman.

Senator PERKINS. Of Nevada.

Senator OVERMAN. Who was his predecessor—Mr. Dennett?

Mr. JONES. Yes; Fred Dennett. Mr. Tallman is one of the most conscientious, thoroughgoing, and hard working men with whom I have come in contact. So far as his peronal effort is concerned, I have been somewhat apprehensive as to whether he would be able to stand the strain which he has been imposing upon himself.

PROPOSED BOARD OF REVIEW.

That is the situation as to the Land Office. From the Land Office appeals are taken to the Secretary of the Interior. We have there, in connection with the Secretary of the Interior, an Assistant Attorney General. Under him are a number of attorneys; about 21 altogether. Not an addition has been made to that force since 1891. Since that time the work of the Secretary's office, which necessarily comes through the Assistant Attorney General's office, has just about doubled. I had

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prepared for the Committee on Appropriations in the House a tabulated statement of the increase of the work for the last five years.

Senator OVERMAN. Yes; we have that statement.

Mr. JONES. I suppose you have it here. A mere glance at it will show the increase of the work which goes through the Assistant Attorney General's office.

Senator BRYAN. You might file that with the clerk.

Senator OVERMAN. It is printed in the House hearings.

Mr. JONES. Yes; it is printed in the House record. It is absolutely necessary that that force shall be increased. The cases coming on appeal from the Land Office alone amount to about 300, or something more, a month. They are decisions involving not entirely the homesteader. It is true a great many of them simply involve homestead claims. Those homestead claims as to money value, as we view it, are in many cases small, but to the homesteader himself they mean very much. Those cases run from the ordinary homestead case to cases involving many millions of dollars. Recently there was on hearing before me a case where the property was estimated to be worth anywhere from twenty-five to one hundred million dollars. In another case the parties on both sides conceded the property was worth at least $5,000,000.

Cases of great magnitude are arising every month, and almost every day. I think the law department of the office of the Secretary of the Interior is the greatest judicial tribunal in the world, so far as property values are concerned. The questions which arise are of great variety, and often quite complex. There needs to be a deliberation in connection with the adjudication of this great number of cases which has not been given to them heretofore. They have not received the deliberate consideration which their importance demands.

In discussing this matter with Secretary Lane before he went West, we thought it advisable that there should be organized within the Assistant Attorney General's office a board of review of men who would be of such character and of such ability that their judgment would be as nearly accurate as could be obtained. I found, after the matter had been discussed between the secretary and myself and others around the department, that the thought was not an original one; that the same idea has occurred to Secretary Fisher. In his recommendations he thought that a board of review consisting of three good lawyers was necessary. The salaries paid the lawyers there is inadequate for the service they perform. They try to get the work out; they are pressing it just as hard as they can; they are working under pressure. No one can come in touch with the Assistant Attorney General's office there without feeling that the men are working under a strain. They are working under pressure. They are trying to keep up the work of the office. Each one of them is doing his utmost, but he is simply unable to do it. The office is behind now over 2,000 cases on appeal from the General Land Office. They are coming in, as I say, at the rate of more than 300 a month, and the office is not able to grind out 300 a month. It is doing all that it can, but the task is simply an impossible one.

The work which has been added to that department has come through the Indian Bureau to a considerable extent. Congress has been putting upon the Interior Department the management of the property of individual Indians. It is estimated that the property

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value handled for the Indians now is something over $900,000,000. Of course the Secretary's office must supervise all those transactions. There come through the office, for action and decision, the heirships of the Indians. They all come to my desk, or did while the Secretary was here. I have transferred that work now to Mr. Laylin. I had to do it during Mr. Lane's absence; but those matters come to me for signature in the ordinary course of the business of the office. All these decisions come to me for my signature. In the nature of things I must know in a general way what they are, and especially when I feel that the Assistant Attorney General's office is so crowded that it has not given to those matters the careful consideration which they deserve. If we had this board of law review I think the First Assistant Secretary would be justified in simply signing the decisions passed over to him by the board of law review, and it would not take up so much of his time. That would give him a greater opportunity to assist the Secretary in matters which are of broader scope.

Senator PERKINS. How many assistant attorneys have you at this time in the office of the Assistant Attorney General?

Mr. JONES. There are 21, Senator; but there were 21 in 1891, and the force has not been increased since that time. In 1891 the 21 assistant attorneys devoted practically all their time to the consideration of these appeal cases. Now only about half of them are able to work upon that class of business, and the others are required to devote their time to Indian affairs and other matters.

Then there is the matter of questions of legislation which are referred to the department. In the last special session of Congress over 1,200 bills were referred to the Interior Department for report. That means something. It means that the department must gather all the information obtainable in regard to these matters, and the opinion of the department is called for upon questions of policy to a very great extent, and these things must be worked out.

I believe it will be conceded that at this particular time there faces the Department of the Interior the solution of problems such as have not confronted it for generations. Conservation has been at work for the last 10 or 15 years. The resources of the West have been withheld from development in the old way. The Territory of Alaska has been practically withdrawn from settlement or development, awaiting some defined plan for the development of that section of the country. The oil lands, the phosphate lands, have been withdrawn; the timberlands in large measure have been withdrawn. Some plan for handling these great resources must now be worked out, and in a large measure it devolves upon the Department of the Interior to do it. The administration, so far as it is concerned, must necessarily look to the Interior Department to work out these great problems. The Secretary himself needs assistance along that line. If the Attorney General's office could be reenforced, it would relieve the First Assistant Secretary, so that he could devote more of his time to those things and to other matters of a broad general nature, which up to the present time, so as far as this administration is concerned, have devolved upon the Secretary himself.

Senator OVERMAN. Mr. Secretary, you have made a very strong case on the merits of the question. The only matter for the committee to decide is whether this is an urgent deficiency matter or not.

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Mr. JONES. If that is the only question, of course, I do not care to argue that technical point. It is for the committee to decide.

Senator OVERMAN. You see, later on we shall have before us what is known as the legislative appropriation bill. All these questions can be considered by the committee upon the merits when that bill is before them. I think the department ought to be given additional help, but the question whether we can do it here or not is one which the committee will have to consider. You have made out a very strong case upon the merits; what you have said would be a splendid argument before a committee having the legislative appropriation bill in charge, and it is a strong argument for us in the way of giving us the information; but whether or not we can do what you ask here is something I can not pass upon. I am inclined to believe that you ought to have additional help. The only question is where we are going to end if we begin to include in this bill that which should have been included in the legislative appropriation bill.

Mr. JONES. Mr. Chairman, I do hope you will give us at least some relief along this line. I feel confident that the matter could not have been presented to the committee when it was in its regular session at the last Congress. I know that this accumulation of work was going on at an increasing rate under the last administration. If it had been presented to the committee in its real light, I feel quite certain that relief would have been granted. I do not want to go on for the next 10 months without getting any assistance.

The business in the Assistant Attorney General's office is behind at least a year, and to permit that to continue will be a very great hardship upon the people in the western part of the country. There are various matters to be dealt with. Just recently we considered a matter down in the State of Louisiana involving the oil fields around Verret Lake. There is a very grave question as to whether those oil lands belong to the Government or to the State of Louisiana. It is a matter which demands attention. The oil is being taken out there now at the rate of thousands of barrels a day, and it is impossible for us to give to these matters the attention which they deserve.

If you can not give us what we want, and if it is a matter of dollars that is to be considered here, I can only say that any money you can give to us will be put to a good use. If you do not want to give the amount for which we ask, give us any amount. We can use it to advantage. But we do want some help, and we would like to get this board of law review there, so as to relieve the situation and do what we think is an absolute essential to the welfare of the Government and the people who do business with it.

Senator OVERMAN. We are very much obliged to you, Mr. Secretary.

STATEMENT OF SENATOR FRANK B. BRANDEGEE.

ACCOUNTS OF UNITED STATES MARSHAL FOR THE DISTRICT OF CONNECTICUT.

Senator BRANDEGEE. Mr. Chairman, I will not take more than a minute. I have introduced and had referred to this committee a proposed amendment, the substantial part of which reads as follows——

Senator OVERMAN. This is what you had before the Judiciary Committee?

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Senator BRANDEGEE. Yes, sir. [Reading:]

That the accounting officers of the Treasury are hereby authorized to allow in the accounts of the United States marshal for the district of Connecticut amounts paid by him from the appropriation "Pay of bailiffs," etc.—

of a total amount of practically $1,000.

I shall be exceedingly brief and put what I have to say in a subnutshell, so to speak. The amendment has been unanimously reported to the Senate by the Judiciary Committee of the Senate, and has been passed by the Senate as a separate bill.

Senator OVERMAN. That will make it in order, Senator. I think there will be no trouble about it.

Senator BRANDEGEE. Of course it is in order, and it is in the nature of a deficiency, because the money was taken out of the appropriation. It is simply validating an account.

Senator OVERMAN. I understand it.

Senator BRANDEGEE. I think you were on the subcommittee.

Senator OVERMAN. Yes; that is all right.

Senator BRANDEGEE. I happened to be in town, and by great good luck I got over here in time to hear the learned arguments of my two distinguished colleagues.

Senator OVERMAN. It is unquestionably a deficiency and has been recommended by the Judiciary Committee. I know all about it.

Senator BRANDEGEE. Yes.

FURTHER STATEMENT OF FREDERIC NEWBURGH, CHIEF OF THE DIVISION OF ACCOUNTS, GENERAL LAND OFFICE.

ADDITIONAL CLERKS, GENERAL LAND OFFICE.

Mr. NEWBURGH. Mr. Chairman, I do not wish to amplify the statements made by the Senator from Montana and the Senator from Arizona. As I understand, the committee is thoroughly in accord with the merits of the matter and the necessity for this appropriation but is hesitating on account of the question as to whether this is a proper item for the deficiency bill.

In that connection I wish to say that there is in the Treasury an unexpended balance of $7,480.88 of the appropriation to which I alluded yesterday.

Senator OVERMAN. Have you drawn an amendment allowing the use of the unexpended balance?

Mr. NEWBURGH. That is what I was going to suggest. I have not drawn an amendment, but I have just suggested as a last resort that if the committee did not see fit to grant the appropriation, there might be an amendment put in the deficiency bill permitting the use of this unexpended balance for the purposes set forth in the original estimate.

Senator OVERMAN. You mean for the clerks in the Land Office?

Mr. NEWBURGH. Yes, sir; for the rest of this year.

Senator OVERMAN. What position do you occupy there?

Mr. NEWBURGH. I am chief of the Accounts Division.

Senator OVERMAN. You were there under the last administration, were you not?

Mr. NEWBURGH. I was there under both administrations. I am in the civil service.

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Senator OVERMAN. Were you before the committee before?

Mr. NEWBURGH. I have been before the committee simply in an advisory capacity, you might say; that is, to state the facts.

Senator OVERMAN. Did you make estimates for these clerks before?

Mr. NEWBURGH. No, sir. There were no estimates made for them in the regular estimates.

Senator OVERMAN. Why did you not do so?

Mr. NEWBURGH. Because I merely discharged ministerial duties, you might say.

Senator OVERMAN. I understand that. Was it considered under the last administration that these clerks were needed?

Mr. NEWBURGH. I am not prepared to say exactly what consideration was given to the matter. I do know, however, as has been said by both the Senator from Montana and the Senator from Arizona, that it was largely a guess as to whether or not these people would be needed. I do not know whether or not there were any promises made that if this additional amount was granted at that time that it would not be asked for again. There might have been some promises made; I do not know.

Senator OVERMAN. It seems that we gave you $75,000 more than you needed before, because there is an unexpended balance.

Mr. NEWBURGH. There are a great many appropriations to be taken into consideration there. Under the appropriation for protecting the public lands, as it is known by the Treasury Department, there was an allotment made for employees in the General Land Office; and possibly that is what you refer to.

As to making the unexpended balance available, I want to explain that the Treasury Department took two appropriations and included them in one in the digest of Treasury appropriations. One was an appropriation of $21,700 for 24 clerks, which was left out. The wording of it was, "To temporarily employ additional clerks," etc., without specifying their duties. Another appropriation was made for the temporary employment of clerks for the purpose of bringing up arrears of work upon returns of surveys. Those were two different classes of work, one being limited to a certain class of work, while the other was not. But in the Treasury Department both were designated under one head as one appropriation, "Temporary clerks, General Land Office." The balance to which I have referred takes both appropriations and does not separate them.

Senator OVERMAN. The point I made was that the committee was very liberal to you if you have had $75,000 more than you needed.

Mr. NEWBURGH. $7,500, Senator.

Senator OVERMAN. Oh, was it $7,500?

Mr. NEWBURGH. Yes; but that was due to the fact that the appropriation did not become available July 1.

Senator OVERMAN. Will you prepare an amendment and send it down to us for these temporary clerks for that unexpended balance?

Mr. NEWBURGH. Yes, sir.

Senator OVERMAN. Let us have it, and we will consider it.

Mr. NEWBURGH. I will leave it with Senator Myers.

Senator MYERS. Yes; I shall be glad to have you do that.

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STATEMENT OF JAMES C. M'REYNOLDS, ATTORNEY GENERAL OF THE UNITED STATES.

Mr. Blackburn Esterline, special assistant attorney, and Mr. Orin J. Field, chief clerk, Department of Justice, appeared.

THE COMMERCE COURT.

Attorney General McREYNOLDS. Mr. Chairman, before taking up other matters, it may not be out of place for me to say a word about the Commerce Court provision in the bill.

Senator OVERMAN. We have a special hearing on that subject to-morrow. We should like to have you come down then, if you will.

Attorney General McREYNOLDS. I shall be very glad to do so.

Senator OVERMAN. Still, we will hear you now, if you prefer.

Attorney General McREYNOLDS. I have prepared a memorandum with certain suggestions about some changes in case the court is actually abolished, in order to distribute the jurisdiction, and to provide for the situation that will ensue.

Senator OVERMAN. That is very important.

Attorney General McREYNOLDS. There seems to be two or three things that ought to be done. I will either come up to-morrow or send up for you a memorandum I have on the subject.

Senator OVERMAN. We will hear you to-day if you prefer.

Attorney General McREYNOLDS. I do not know that I care to go into the matter further. The memorandum will give you what I wanted to say about the additions to the bill. It was gotten up so as to give you the least trouble in amending the bill, provided you approve the suggestions.

Senator OVERMAN. In other words, if we follow the House you want some amendments made in order to transfer the jurisdiction?

Attorney General McREYNOLDS. Yes.

Senator PERKINS. What action has been taken by the Judiciary Committee?

Senator OVERMAN. The Judiciary Committee has not acted. The House has abolished the court, the judges, and everything else.

Attorney General McREYNOLDS. Personally, I think it is a bad thing to abolish the court.

Senator OVERMAN. If we could get rid of the judges I think perhaps the court would stand.

Attorney General McREYNOLDS. Yes; but when you undertake to get rid of the judges I think you are getting into a pretty serious situation. I really think the precedent that would be established would be a much more serious matter than the good that would be accomplished.

Senator OVERMAN. Thomas Jefferson removed about 15 judges, did he not?

Attorney General McREYNOLDS. They had never qualified, if I remember correctly. Their commissions were held up about a year, and they never actually got into office. But here you are undertaking to legislate out some men who have been put in office, who have given up all their other work, and who have been circuit judges for two or three years. It seems to me that even if it were constitutional it would be an exceedingly questionable thing to do.

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Senator PERKINS. We got rid of one of them—Judge Archbald.

Attorney General McREYNOLDS. Yes; but that was done in a way that was provided. Of course I have no brief for those judges. I think the court was in some respects badly constituted; but I am looking beyond. We are having a pretty tough time in getting the sort of people we want to go on the bench at all in these days. I have been very painfully aware of that fact in the last six months, ever since I have been trying to find some judges.

Senator PERKINS. I think you did very well for California, though.

Attorney General McREYNOLDS. I am very glad to hear you say so, Senator. It is not so troublesome when you get out of New England and New York, but it is difficult up there. For instance, the trial judge in Connecticut receives a larger salary than a United States circuit judge, and the State court is where we naturally look for judges for the Federal court. I have been trying my best up there, for weeks and weeks, to find a man that seemed to me to be altogether satisfactory for the district judge, and I have been turning down one after another until it is rather painful.

I find I have here the very memorandum I referred to, Senator.

Senator OVERMAN. That is in regard to the Commerce Court?

Attorney General McREYNOLDS. Yes; in regard to the Commerce Court.

Senator OVERMAN. I wish you would hand it to the stenographer, and he will incorporate it in the hearings.

(The matter referred to is as follows:)

[Memorandum re Commerce Court provisions.—H. R. 7898.]

I. The abolition of the court is effective December 31, 1913, but the abolition of the judgeships is effective immediately. This could be remedied by the following mendments:

Page 21, line 16, after "abolished" insert "effective December 31, 1913."

Page 22, line 2, after "repealed" insert "effective December 31, 1913."

II. No provision is made for cases under advisement, which are excepted (p. 24, line 25). They should be transferred.

This could be accomplished by the following amendment:

Page 24, line 25, strike out "except" and insert "including."

III. There should be some provision for jurisdiction to enforce existing decrees, especially mandatory injunctions (the Union Stock Yards case and the Stony Fork Car Distribution case). And incidentally the records, judgments, etc., now on file in the office of the clerk of the Commerce Court, should be transferred in the same way as the papers in the pending cases.

This could be accomplished by the following amendment:

Page 25, line 2, after "-cree" insert "and all cases wherein injunctions or other orders or decrees, mandatory or otherwise, have been directed or entered prior to the abolition of the said court shall be transferred forthwith to said district courts, which shall have jurisdiction to proceed therewith and to enforce said injunctions, orders, or decrees."

IV. The administrative books, dockets, and all papers not belonging to any particular case should be lodged in the Department of Justice.

This could be accomplished by the following amendment:

Page 25, line 17, after "courts" insert:

"All administrative books, dockets, and all papers of the Commerce Court not transferred as part of the record of any particular case shall be lodged in the Department of Justice."

Attorney General McREYNOLDS. Let me see if I want to add anything to this:

The abolition of the court is effective December 31, 1913, but the abolition of the judgeships is effective immediately.

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If you will look at the place where the judges are abolished, you will see what is meant by that.

Senator OVERMAN (reading):

The five additional circuit judgeships provided for by the act of Congress approved June eighteenth, nineteen hundred and ten, and by chapter nine of the act entitled "An act to codify, revise, and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven, are hereby abolished, and the authority in said acts of Congress for the President, by and with the advice and consent of the Senate, to appoint five additional circuit judges is hereby repealed, and the number of circuit judges is hereby reduced to twenty-nine.

Yes; that would affect it at once.

Attorney General McREYNOLDS. That would get us into trouble, you see. It is suggested on page 21 of the House text, line 16, after "abolished," to insert "effective December 31, 1913," if this general policy is to be accepted. Also, on page 22, line 2, after "repealed," insert "effective December 31, 1913."

Senator BRYAN. This print does not correspond to the one you refer to.

Senator OVERMAN. No; we will have that fixed, though. We can get the House print. It makes no difference about the line. We will fix that all right.

Attorney General McREYNOLDS. No provision is made for cases under advisement, which are excepted in the bill. They should be transferred. This could be accomplished by the following amendment:

Page 24, line 25, strike out "except" and insert "including."

Then there should be some provision for jurisdiction to enforce existing decrees, especially mandatory injunctions, such as in the Union Stockyards case and the Stony Fork Car Distribution case. Incidentally, the records, judgments, etc., now on file in the office of the clerk of the Commerce Court should be transferred in the same way as the papers in the pending cases. This could be accomplished by the following amendment:

Page 25, line 2, after "decree," insert:

And all cases wherein injunctions or other orders or decrees, mandatory or otherwise, have been directed or entered prior to the abolition of the said court shall be transferred forthwith to said district courts, which shall have jurisdiction to proceed therewith and to enforce said injunctions, orders, or decrees.

Senator BRYAN. Before you take up the next matter, have you a statement to submit upon the question of whether or not the court should be abolished?

Attorney General McREYNOLDS. No; I have not prepared anything as to that, Senator. I did not know whether or not you cared to have me give you my views on that point.

Senator PERKINS. I think the committee wants your opinion on that subject.

Senator BRYAN. I understand that the Attorney General's opinion is that it would be a bad move; but I thought perhaps he had some statement prepared covering the matter.

Attorney General McREYNOLDS. No; I have not, because I did not know that the committee would wish it.

Senator PERKINS. As far as my vote is concerned, it would be cast in the direction of the recommendation of the Attorney General.

Senator BRYAN. In view of that, I think the Attorney General ought to give us a statement of his views.

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Attorney General McREYNOLDS. I am opposed to the abolition of the Commerce Court, Senator. I do think, however, that the court ought to be given some additional work. If the railroads are to be allowed to pick out jurisdictions all over the country where they can bring these suits in opposition to the rulings of the Interstate Commerce Commission, it will create a degree of confusion, uncertainty, and difficulty that it will be very troublesome to meet.

In the first place, different judges have different tempers about all these things. The people who manage these suits soon find out where the judge is with the temper that they want to reach; and these provisions about assembling a court of three would make a very troublesome situation. It is difficult to get at, and it is difficult for the Government to defend the suits properly.

To send a man into any district where these cases may happen to be brought is expensive, and unsatisfactory. Many of the judges know nothing about the fundamental propositions that are involved. I think we get a very much better result by having a properly organized and qualified court. I do not think this court has enough to do, but I do think it could be utilized.

Senator OVERMAN. Do you know how many cases they have now?

Attorney General McREYNOLDS. Very few; but the court could be very properly utilized, I think, to relieve the Supreme Court of a great many things.

Senator OVERMAN. You say "very few." I should like to know how many they have.

Attorney General McREYNOLDS. I think Mr. Esterline can tell you about that.

Mr. BLACKBURN ESTERLINE. They have seven cases under advisement.

Attorney General McREYNOLDS. There has not been a new one brought for some time, has there, Mr. Esterline?

Mr. ESTERLINE. None since February.

Attorney General McREYNOLDS. But the court has been in an uncertain situation, you know, and nobody has known where to bring the suits. That is my general impression about it. I think the business could be more orderly taken care of here in Washington.

Senator OVERMAN. What do you think of the plan of having a different kind of court, which would be given jurisdiction of patent cases, to relieve the Supreme Court and also to have harmony in the decisions?

Attorney General McREYNOLDS. I think very well, indeed, of it.

Senator OVERMAN. If we could abolish this court, could we not establish another court to take care of all patent cases and, if necessary, land cases?

Attorney General McREYNOLDS. Appeals from the Panama strip, appeals from the Philippine Islands, appeals from Porto Rico, and a number of things could be properly thrown in there, I think, with very decided benefit to the country.

Senator OVERMAN. If we get rid of this court, it might be a good plan to establish one with different jurisdiction. Here are only seven cases that they have to attend to. There is no harmony at all in the decision of patent cases now, is there?

Attorney General McREYNOLDS. Absolutely none; and they are a perfect stench.

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Senator OVERMAN. And they want a court of review here for the Land Office. I do not know but that they might attend to that work.

Attorney General MCREYNOLDS. I think so. I think, myself, that the whole thing ought to be canvassed.

Senator OVERMAN. I wish you would think about it and see if you can not get up some substitute court.

Attorney General MCREYNOLDS. I shall be very glad to do so, Senator.

Senator PERKINS. We can not very well put it on the deficiency bill.

Senator OVERMAN. Oh, no; I am just talking about legislation. We would not put in on any appropriation bill.

Attorney General MCREYNOLDS. Of course the only feasible thing to do would be to let this court stay in existence, possibly, until you could canvass the matter and draft a bill covering the whole situation. I think that it is more important not to abolish these judgeships than it is not to abolish the court. I mean, speaking from the larger standpoint, I think that is a very dangerous question. I must confess I wish some of these judges had not been appointed.

Senator PERKINS. You have the power to detail them to the circuit courts?

Attorney General MCREYNOLDS. Yes; they go back as circuit judges. For instance, we have a circuit court place vacant out at Chicago, and we have been very careful not to fill it until it is decided what is going to happen to this court. I do not want to fill it until that is determined. If one of the judges of the Commerce Court is to go back there, we will have four circuit judges, and that is enough, whereas if we fill this vacancy and he goes back we will then have five, which is too many. Therefore we have let it stay vacant.

Senator OVERMAN. Suppose we had a vacancy down in my State, where we only have two judges, I believe; could not one of these judges be assigned down there if we needed him? We do not want any of them; but still, under the law, could not that be done?

Attorney General MCREYNOLDS. He could be assigned as long as the present arrangement exists.

Senator OVERMAN. He is not bound to be assigned from the district to which he is appointed?

Attorney General MCREYNOLDS. If this court is abolished, he will go back to the circuit to which he belongs.

Senator OVERMAN. That is what I understand.

Attorney General MCREYNOLDS. If the court stays they can hold court for us all over the country, all the way from California to New York City.

Senator OVERMAN. That is what I understood.

Senator PERKINS. United States Circuit Judge Morrow has been down in Arizona, I think.

Attorney General MCREYNOLDS. Yes; but that is in his circuit, you see, Senator; and these men can be assigned to any circuit.

Senator PERKINS. He also has jurisdiction over the Hawaiian Islands, has he not?

Attorney General MCREYNOLDS. Yes; the circuit court of appeals out there has jurisdiction over the Hawaiian Islands.

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Senator PERKINS. Judge Ross is a very able man. Do you know him personally?

Attorney General MCREYNOLDS. No; I do not know him personally, but he is a very able man. Judge Morrow is 70 now, and I understand he is thinking of resigning.

Senator PERKINS. He told me he intended to resign.

Attorney General MCREYNOLDS. They rarely resign nowadays unless they are incapacitated.

ASSISTANT TO THE ATTORNEY GENERAL.

Now, coming to this question of appropriations, in the first place I was very anxious to get a better salary for the Assistant to the Attorney General. He is the man who has direct charge of the trust litigation. We have dozens of those suits, and you know what they involve. They involve millions of dollars, and they must all be superintended from Washington. We can not pick up men around through the country who know about them; and the position ought to carry a better salary than the man has heretofore been allowed.

Senator PERKINS. What is his present salary?

Attorney General MCREYNOLDS. His salary now is $7,000. I asked that it be made $9,600. That is little enough for a man who has charge of suits involving a hundred million dollars. If he goes to sleep 15 minutes he may lose one of them. The House committee reported a salary of $9,000. That was stricken out, as I understand, on a point of order.

I presume it is not feasible now, and therefore perhaps it will not do any good to talk about it, but all those assistants in my office ought to have better salaries. It has gotten to a point where it is nearly impossible for me to get the sort of people we need.

Senator OVERMAN. I appreciate that fact. There is only one trouble about it, and that is, this being a deficiency bill, whether we can go into matters which belong in the legislative appropriation bill.

Attorney General MCREYNOLDS. That one increase might be made, in view of the fact that it was reported by the House committee, and it would help that much. It may be that nothing can be done about the others now.

ADDITIONAL CLERKS, DEPARTMENT OF JUSTICE.

I asked before the House committee for two additional clerks at $1,200 each. The department is badly in need of more stenographers, and these two clerkships were intended for this purpose. For instance, I employ a man to bring a suit out somewhere in the United States, one of these trust suits. He has to come down here, and he must be instructed, and he must be helped, and we have no stenographers to do his work. Every stenographer we have is taken up. We ought to have at least a couple of additional stenographers. It would seem to be a reasonable request. I do not know why the committee of the House cut it out. If you could properly restore it, I should be very glad. It is needed, and badly needed.

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RENT OF BUILDINGS.

The next thing that I want to call your attention to is the item of $1,200 for miscellaneous contingent expenses. This is for the purpose of allowing the department to exchange its present office space in the Bond Office Building, consisting of nine rooms, for a house at No. 4 Jackson Place, which can be had for a rental of $1,800.

Senator OVERMAN. Is that item of $1,200 for the house under "contingent expenses"?

Attorney General McREYNOLDS. That would be for furnishings, etc.

Senator OVERMAN (reading):

For miscellaneous expenditures, including telegraphing, fuel, lights, foreign postage, labor, repairs of buildings, care of grounds, books of reference, periodicals, typewriters and adding machines, and exchange of same, street-car tickets not exceeding $200, and other necessaries directly ordered by the Attorney General for the fiscal year nineteen hundred and fourteen, $1,200.

Would that $1,200 allow you to rent this building?

Attorney General McREYNOLDS. It was intended for that.

Senator OVERMAN. It was intended for that purpose?

Attorney General McREYNOLDS. When I get along a little further I will discuss that more in detail. I should like to get all the items before you first.

The department is now renting Nos. 8 and 6 Jackson Place, and it would be a great convenience if we could have the adjoining building in place of the space located in the Bond Office Building. This matter was fully explained in the hearings before the House committee, and I do not know that I can add a great deal to that. Here are the facts about it:

We have had for a long time what we call the Indian depredation claims. There was a special Assistant Attorney General put in charge of them. When I came here I looked into the situation, and I concluded that the proper thing to do was to put that work under the charge of the man who had general control of the Court of Claims work, and to take that Assistant Attorney General's place and utilize him for other purposes. Therefore I appointed Mr. Graham, who is looking after a thousand things down there for me, and I have turned over to the Assistant Attorney General in charge of the Court of Claims work this old Indian depredation work; but now he finds that such force as he has for the Indian depredation work is away over in the Bond Building on New York Avenue, and the rest of his force is at Nos. 6 and 8 Jackson Place.

Senator OVERMAN. Where is Jackson Place.

Attorney General McREYNOLDS. It is at Lafayette Square.

Senator PERKINS. Opposite the White House.

Attorney General McREYNOLDS. So he finds himself in that attitude.

Senator OVERMAN. As to this Indian depredation work, several years ago, and probably last year, it was a question with the committee whether we would not wipe out all of that. I think the fact that this negro was in charge of it had something to do with the matter; but it was proposed to wipe out the appropriation for Indian depredation work. They said they had but two cases on the docket, I think.

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Attorney General McREYNOLDS. Oh, no; there are hundreds of cases, but no new case can be brought for anything that happened since 1894, I think. I am trying to clear up the docket. I think we got rid of some hundreds of the cases recently; but I have put that work under the man who has control of the Court of Claims work, and he finds part of his force in the Bond Building and part of his force in the Jackson Place Building. I took the man who was Assistant Attorney General and brought him over to the main building so that I could utilize him there.

In addition to that we have not any space to work in. We are working under conditions which are simply impossible. For instance, take the real estate department: We have titles literally to millions of dollars' worth of property running through there. We have three lawyers trying to work in one room. If I bring a man here to do some special work I have absolutely nowhere to put him, unless I can stick him around in a crack somewhere. You can not do law work in a room with other people. Everybody knows that. By renting this building, which we estimate would cost us about $2,000, the conditions would be greatly improved.

Senator OVERMAN. What building is that?

Attorney General McREYNOLDS. It is next door to where the Court of Claims work is being done now, at No. 4 Jackson Place. The truth of the matter is that the very narrow limitation Congress has put on the ability to rent any more buildings here at all has given rise to a lot of confusion. For instance, take the force that is now trying to enforce the Mann Act: Actually, I had to move them over to Baltimore, and they are there now, because of the provision that we could not spend any money to rent an office building in Washington unless it was especially appropriated for. The result is that the headquarters of that office is in Baltimore. The absurdity of it all is very apparent. This is not very much, but it will help us.

Senator OVERMAN. It amounts to about $3,000?

Attorney General McREYNOLDS. No; it amounts to only $2,000, does it not?

Senator OVERMAN. It is $1,200 and $2,400, apparently.

Senator PERKINS. How much are you paying for the Bond Building? You would surrender that, would you not?

Attorney General McREYNOLDS. We would surrender that and get this house for about $1,800; but it will cost something for the upkeep of the house that we do not have to pay for the office building, and it will have to be furnished.

Senator OVERMAN. Is it not more than that? I understand that the item of carpets comes to $1,000, and that you need $1,200 for contingent expenses.

Attorney General McREYNOLDS. Yes; $2,200. Is that right?

Mr. ORIN J. FIELD. Yes; that is right.

Attorney General McREYNOLDS. Mr. Field tells me that the excess for the year will be $2,200, or, say, about $3,000.

Senator OVERMAN. The committee is disposed to give you a sufficient amount for rent, but I should like to know where it would be included. Mr. Chief Clerk, you see where the estimate provides for the salary of the Assistant to the Attorney General, and the two clerks?

Mr. FIELD. Yes, sir.

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Senator OVERMAN. Then it says:

For the following force for the Solicitor of the Department of Justice for the Department of Labor.

Then you come down to "Contingent expenses, Department of Justice, Furniture and Repairs."

Attorney General MCREYNOLDS. That is for this building.

Senator OVERMAN. That is for this building, is it?

Mr. FIELD. Yes, sir. You see, if we rent this building, there will be about six more rooms than we now have, and that is to furnish those extra rooms. The $1,200 was for heat and light.

Senator OVERMAN. The $1,000 is for furnishings?

Mr. FIELD. Yes, sir.

Senator OVERMAN. The next item of $1,200 is for fuel and lights, etc.?

Mr. FIELD. That is for heat, light, and miscellaneous expenses.

Senator OVERMAN. That is $2,200, and the rent of the building is $1,200?

Mr. FIELD. There are two charwomen, also.

Senator OVERMAN. We will come to that item presently.

Mr. FIELD. The item of $1,200 for rent is a separate item, Mr. Attorney General. You asked for that in order that we might have a rent fund out of which we could rent additional space if we should need it.

Attorney General MCREYNOLDS. That is another thing, is it?

Mr. FIELD. Yes; it has nothing to do with this proposition.

Senator OVERMAN. So this item of $1,200 here for "Rent of buildings, Department of Justice," has nothing to do with what we are talking about?

Mr. FIELD. No, sir.

Senator OVERMAN. So the $2,200 is really the amount you want?

Mr. FIELD. Plus the two charwomen at $480, which would be a total of $2,680.

Senator OVERMAN. I do not see that estimated for.

Attorney General MCREYNOLDS. Is not that estimated for?

Mr. FIELD. Yes, sir.

Senator OVERMAN. That is for the rent of this new building?

Mr. FIELD. Yes, sir; the two charwomen, $1,000 for furniture, and $1,200 for heat and light, which has to do with the proposition to move into this new building.

Senator OVERMAN. And the $1,200 is for rent?

Mr. FIELD. Yes, sir.

Attorney General MCREYNOLDS. It is a possible contingent amount. It does seem to me that we ought to have a little bit of leeway, if I may call it such.

Senator PERKINS. That is a proper nautical term.

Senator OVERMAN. Will an emergency of this kind be likely to arise in the next six or eight months? We are not acting now on a legislative appropriation bill.

Attorney General MCREYNOLDS. I do not know about that; but if we can have this additional building over there, with these things, we will have to get along with that.

Senator OVERMAN. Then when the legislative appropriation bill comes up, we can give you this other fund, if necessary.

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Attorney General McREYNOLDS. As I said to you a while ago, we are trying to have titles examined and real estate litigation taken care of by three lawyers sitting up in one room, and it can not be done.

Senator OVERMAN. Do you not provide for getting more space?

Attorney General McREYNOLDS. We get six more rooms. They would help us that much.

CLERKS FOR SOLICITOR FOR DEPARTMENT OF LABOR.

The Solicitor for the Department of Labor asks for a number of clerks. He asked for too many originally, and the House did not give him any at all, did they, Mr. Field?

Mr. FIELD. No, sir; they did not. He has three clerks now who are detailed from the office of the Solicitor for the Department of Commerce.

Attorney General McREYNOLDS. Yes. He ought to have not more than three and not less than two. These clerks were detailed to him from the Department of Commerce. They are going to separate the work, you know. He ought to have about two clerks. He ought to have one clerk at $1,800 and one at $1,600, or possibly three altogether.

Senator OVERMAN. He wants a limousine and an ordinary automobile, too, I believe?

Attorney General McREYNOLDS. No; this is the solicitor. There are no limits to our wants, you know, but I really think this man ought to have about two clerks.

LAW LIBRARY, OFFICE OF SOLICITOR FOR DEPARTMENT OF LABOR.

The House allowed the Solicitor for the Department of Labor $500 for his law library, but that is not quite enough.

Senator OVERMAN. Where is the law library that was allowed to the Department of Commerce and Labor?

Attorney General McREYNOLDS. They have moved, you know.

Senator OVERMAN. I know they have moved. They have a solicitor there, too, have they?

Attorney General McREYNOLDS. Yes; they have a solicitor there, too. This man ought to have not exceeding a couple of thousand dollars for his law library. He wanted $5,000, but that is too much; but I do think he could put in a couple of thousand dollars' worth of books with good effect.

RENT OF BUILDINGS.

I have already spoken of this $1,200 for an additional rent fund for the department. I think it would be very desirable if we could have that, because we are likely to need it at any time. This thing of moving over to Baltimore seems to me to be very bad.

Senator OVERMAN. What do you pay in Baltimore?

Attorney General McREYNOLDS. $3,600, as I understand. As I say, the man who is in charge of the Mann Act investigation had to establish his headquarters in Baltimore because we could not rent an office in Washington and there was no place here to put him. It is a pretty awkward arrangement.

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Senator OVERMAN. Oh, you ought to have the office here.

Attorney General McREYNOLDS. We ought to have it here. As Mr. Field tells me, if we call in an outside counsel who has charge of a case, we have nowhere to put him.

Senator OVERMAN. How is the money expended for rent—under what item in the appropriation?

Mr. FIELD. It is paid out of the fund for the prosecution and detection of crime. It is a general fund of $400,000 for investigation, including the "white-slave" act. It does not provide specifically for rent.

Senator OVERMAN. But you think that by construction of the act you have a right to rent quarters?

Mr. FIELD. Outside of the District of Columbia; yes, sir.

Attorney General McREYNOLDS. There is a statute which prevented us from renting them in the District.

Senator OVERMAN. I do not see why you should rent quarters over there. Why can we not have some amendment put in to the effect that the fund now expended for rent in Baltimore for enforcing the Mann Act may be used for renting a building here? That, of course, would give you authority, notwithstanding the other act, if you want to come here. I do not know whether or not you can get a building here for $3,600. Rents are higher in Washington than anywhere else, especially where the Government wants to rent property. The Commerce Court pays $16,000 a year for one floor. That is one thing that put Congress against them.

Attorney General McREYNOLDS. They did everything that was foolish, apparently.

Senator OVERMAN. And their furniture is about the finest furniture on earth. The same is true of their curtains, etc.

Attorney General McREYNOLDS. I mention that to you merely to show that it seems to me the department ought to have some sort of a contingent fund of a few thousand dollars which the head of the department can use. You give him perhaps three or four hundred thousand dollars in other directions. I imagine it has been abused, and I quite understand why it has all grown up; but you see the difficulty.

Senator OVERMAN. I think the Department of Justice is worse provided for than any other department of the Government so far as buildings are concerned.

Attorney General McREYNOLDS. Yes; the accommodations are very bad. Mr. Field tells me that when Mr. Kellogg was here working on the Standard Oil case he had to rent some rooms and pay for them himself. We could not give him anything. If I should bring a man in here to do a couple of months' work on some of these important cases to-day there would be no place to put him.

Mr. FIELD. Everything is chock full.

Attorney General McREYNOLDS. Mr. Gregory, for instance, has been here from Texas all the summer working on this New Haven Railroad matter, which is very complicated and very troublesome. There are lots of documents involved, and all that. He has had a little bit of a cubbyhole to work in.

Mr. FIELD. It used to be a toilet room or bathroom, and we cleaned it out.

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Attorney General McREYNOLDS. Yes; it used to be a bathroom; yet, there is a man that we have to pay ten or twelve thousand dollars a year, and we bring him here and hamper him in that way. There is no room in there for a stenographer, is there?

Mr. FIELD. No; it is a little two-by-four room—literally, about six by eight.

Senator PERKINS. The Department of Justice ought to be better housed.

Attorney General McREYNOLDS. I really think we ought to have this. We ought to have a contingent fund of $25,000.

Senator BRYAN. If your department were relieved of the prohibition against renting a building, is that all you would need? Then you would not need this appropriation of $1,200, would you?

Mr. FIELD. We would still need the money.

Senator BRYAN. But you would have it in your contingent fund, would you not?

Mr. FIELD. That contingent fund is so heavily drained at present that there would not be $1,200 to spare for rent.

Senator BRYAN. It would relieve you of some of the restrictions in this act.

Attorney General McREYNOLDS. Yes; that would help.

Senator OVERMAN. I think the House is opposed to allowing any more rentals.

Senator BRYAN. There is a great deal of opposition in the Senate. I have heard the statement made on the floor, in the discussion of these appropriation bills, that whenever a new building is put up, if we move a department into it, it does not lessen by $1 the amount paid for the old building out of which the department moves, as some other use is found for it; and Senators can not understand it.

Attorney General McREYNOLDS. There is something in that; but just let me call your attention to this fact: I went into the Department of Justice 10 years ago, and I should say there is twice as much to do now as there was then; is there not, Mr. Field? You have been there right along.

Mr. FIELD. Every bit of it, Mr. Attorney General.

Attorney General McREYNOLDS. There is twice as much, if not more. They tell me that in the district of New York in four years the amount of work has doubled, if not trebled; and so it goes with all the departments.

Mr. FIELD. We have to rent about 10 more rooms every two or three years.

Senator OVERMAN. Could you rent a building for $3,600 here in Washington and transfer that bureau to Washington, and also give you more space?

Mr. FIELD. $3,600 would give us about 15 to 20 rooms, I suppose, in one of the office buildings.

Senator OVERMAN. How many rooms do you have in Baltimore?

Mr. FIELD. For the $3,600? I really do not know; I can not say offhand.

Senator OVERMAN. How would it do to authorize you to spend for rent of a building in Washington the $3,600 now being spent for rent in Baltimore?

Mr. FIELD. Whether or not it is any cheaper here than in Baltimore, I do not know.

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Senator OVERMAN. The question is whether or not you could get it. That is the question I am asking. If you could, we could fix a way to get it, if you want the bureau transferred here.

Attorney General MCREYNOLDS. Of course it ought to be here.

Senator OVERMAN. The question is whether or not you could get a building.

Attorney General MCREYNOLDS. It looks preposterous to have to go to Baltimore for the purpose.

Mr. FIELD. Of course you do not mean that we could get a building for $3,600. All we could do would be to get space in some of the office buildings.

Senator OVERMAN. But the question is whether you could get as many rooms as you need.

Mr. FIELD. There is no trouble in getting space. Take the Southern Building, where the Commerce Court is, and where we also have a number of rooms——

Senator OVERMAN. They paid $16,000 for the space they had there.

Mr. FIELD. A lot of that was for making alterations in order to give them a court room. We can get rooms in the Southern Office Building for about $36 per month per room on an average.

Senator OVERMAN. That would only give you 10 rooms.

Attorney General MCREYNOLDS. We certainly ought to have that building over on Jackson Place to exchange for the Bond Building space, and we certainly ought to have a fund of a few thousand dollars for contingencies. I do not know how you can manage it.

Mr. FIELD. We may not necessarily have to rent $1,200 worth of space, but we merely want to have that fund from which rooms can be rented as we may need them from time to time. If we have special counsel here for a few weeks or months working on some case, we ought to have some place to put them, with their stenographers.

Senator OVERMAN. How much money are you now expending for rent, Mr. Field?

Mr. FIELD. $32,200.

Senator OVERMAN. Could you not get a great big building for $32,000 that would hold all these branches and give you more space?

Mr. FIELD. We could probably get a building which would house all of our branches for somewhere in the neighborhood of $50,000, say, but that probably would include heat and light and elevator service, and in the end would about even up. As it is now we pay this $32,000 rent, and we have to pay for heat and light for the buildings and pay for our own janitor service.

Senator OVERMAN. That is, as I understand, you could rent one of these great big buildings for $50,000, say, and get your heat and light and really save money by it?

Mr. FIELD. We would just about even up, I think. I have figured it up several times and have had up several propositions of that kind. If we could get in an office building, it would be much more convenient. While we would have to pay, perhaps, $50,000 for rent, we would save the difference on fuel, electric light, elevator service, watch service, charwomen, etc., but we could not do that without specific authority, because the law prohibits entering into contracts for rent without such authority.

Senator OVERMAN. But, I say, we could give you authority. We could work that out.

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Senator BRYAN. If we let the Attorney General turn over this matter to the man who has his office in the bathroom, he will find a way to work it out. [Laughter.]

Senator OVERMAN. If you could work that out, we might give you authority. It will not cost the Government any more. Nobody can object to that.

Mr. FIELD. I have had propositions at different times for something of the sort. Some one would offer to put up a building for us, but the idea has always been that that could not be done in view of the fact that the Government has purchased this ground and plans were drawn for a new building.

Senator OVERMAN. You could make a three-year or five-year lease for $50,000, say. We could authorize you to rent a building in the District.

Mr. FIELD. When the Southern Office Building was put up, where the Commerce Court now is, they offered to rent us space in that building for our entire department, which would have taken about four floors, for about $50,000.

Senator OVERMAN. That would take care of your whole force?

Mr. FIELD. Yes; our whole force.

Senator OVERMAN. And put you all together?

Mr. FIELD. All together.

Senator OVERMAN. And save fuel, light, etc.

Senator BRYAN. What about the leases you now have? Could you surrender them?

Mr. FIELD. Most of those can be terminated on three months' notice and some of them on one month's notice. I have purposely kept them where they could be terminated on very short notice.

Senator OVERMAN. All right. Is there anything else, Mr. Attorney General?

Attorney General McREYNOLDS. I have here a memorandum of the assignments of judges of the Commerce Court, which I should like to submit for the record.

The matter referred to is as follows:

ASSIGNMENTS OF COMMERCE COURT JUDGES.

Judge Carland has participated in the decisions of 145 cases in the Circuit Court of Appeals for the Eighth Circuit during the past two years and has written 48 of these cases. He is now on his way to Denver to participate in the coming session of that court.

Judge Hunt sat in the circuit and district courts in Montana during part of December and all of January, 1912, and in the district court for Arizona during April, 1912, and in the Circuit Court of Appeals for the Ninth Circuit during May, 1912, and May, 1913. He also held District Court for the Southern District of New York during November and December, 1912, February, 1913, and a part of January, 1913. He is now assigned to hear cases in the latter court during the coming months of October, November, and December.

Judge Mack sat in the Circuit Court of Appeals in Chicago in 1912, held district court in Arizona during May and June, 1912, district court in New York December, 1912, and all of January, February, April, May, and June, 1913. He is now expecting an assignment to sit in some circuit court during October, November, and December.

Judge Knapp is generally fully occupied as a member of the Board of Mediation, upon which board he serves without pay. He also sat in the Circuit Court of Appeals in Richmond during part of May, 1913. He is expecting another assignment to this same circuit during the coming fall.

As soon as the work of the Commerce Court does not need the services of all its judges, they are immediately assigned for services in the several districts throughout the United States. These assignments are always arranged so as not to interfere with the sessions of the Commerce Court, and the judges are always able to meet in Washington to hear a case upon short notice if the emergency arises.

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ENFORCEMENT OF ANTITRUST LAWS.

Attorney General McREYNOLDS. I asked for an appropriation of $25,000 for the enforcement of the antitrust laws to cover things that have come in during the last year. The House allowed nothing. Unpaid claims and unpaid accounts have now come in which amount to $8,500 in excess of the appropriation, and others will be pretty sure to come in. There is an old claim of $8,947.98, and $8,500 in addition to that—nearly $10,000—which is already reported to us.

Senator OVERMAN. These are claims, you say?

Attorney General McREYNOLDS. Yes.

Mr. FIELD. Bills pending unpaid.

Attorney General McREYNOLDS. I do not know how much more will come in.

Senator OVERMAN. Have they been audited and ordered to be paid?

Mr. FIELD. Yes, sir; that is, they are in our auditing office awaiting funds.

Senator OVERMAN. Unless they have been approved and audited, they can not go in this bill. These are not audited claims.?

Attorney General McREYNOLDS. No, sir; they are not audited claims in the sense of which you speak. They are unpaid accounts.

Mr. FIELD. They are accounts claiming settlement, you might say. They have not been referred to our disbursing officer.

Senator OVERMAN. They have been approved by the Department of Justice?

Mr. FIELD. Yes, sir. They are being held in the disbursing clerk's office, awaiting funds with which to make payment.

PAY OF SPECIAL ASSISTANTS.

Attorney General McREYNOLDS. For the pay of special assistants, out of last year's fund the balance remaining is less than $1,000. The accounts for the last fiscal year have not all come in, and I can not tell what they are going to be. I am anticipating some very heavy litigation with the Southern Pacific Railroad about the oil lands out in California, and I thought it would be a good plan to have that appropriation, if it was allowed, run until expended.

That is all we have, is it not?

Mr. FIELD. There are a number of items where the amount in the bill as it came from the House is a few dollars different from our estimates, but the amounts are all right. Our estimates were in round numbers; and when they came to make up the bill, two or three months later, we found that there was a variation of a few dollars.

Senator OVERMAN. We are very much obliged to you.

Attorney General McREYNOLDS. We are much obliged to you, Senator, for giving us attention. If you can provide for the rent matter in particular, I think it will help us out very much.

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STATEMENT OF WILLIAM L. CHAMBERS, COMMISSIONER OF MEDIATION AND CONCILIATION.

BOARD OF MEDIATION AND CONCILIATION.

Mr. CHAMBERS. Mr. Chairman, as is perhaps familiar to the committee, the legislation creating the offices of Commissioner and Assistant Commissioner of Mediation and Conciliation was rather hurriedly passed. The bill itself was introduced some months before it came to the stage of passage, but you remember the condition of a threatened strike of the employees of the 53 eastern associated railroads. Under the emergency situation the legislation followed a conference at the White House, the effort being to stop a very serious condition which threatened to tie up all the railroads in the eastern part of the United States.

Without any intention whatever to criticize, I may say that not enough thought was given to the expenses of this work. There was a lump continuing available appropriation of $25,000. The salaries of the commissioner and assistant commissioner are fixed by the act at $7,500 for the commissioner and $5,000 for the assistant commissioner. The act also provides for the rental of sufficient quarters, for the employment of whatever assistants in the way of clerks, messengers, etc., are required, and all the traveling expenses. Evidently it must have been in the minds of members of the committee that the $25,000 was sufficient for that purpose, which it is, just about. The salaries amount to $12,500, however, and the total appropriation is $25,000.

The duties of the commissioner and the assistant commissioner call them all over the country. Briefly, as an illustration, since the 19th of July, when I received my appointment, I have held conciliation board meetings once in Vermont, twice in New York, twice in Illinois, once in Missouri, once in Utah, once in California, once in Virginia, and again, commencing on Thursday of this week, in Norfolk, Va.

Senator OVERMAN. All in about three months?

Mr. CHAMBERS. Yes, sir; in less than three months.

Senator PERKINS. You are to be congratulated upon what you have accomplished.

Mr. CHAMBERS. Thank you, sir. On that point, Senator, I can say that out of those nine mediation board meetings, only three arbitrations have followed. Six of the very serious conditions have been settled by mediation. That is, we gather at these meetings the representative officers of the railroads or groups of railroads and the representative officers and chairmen of the men; we take up the complaints, requests, or demands of the men—whatever they may be called—and go through them, one at a time.

In one instance, in Chicago, there were 98 demands, all of which were settled through mediation. If we fail to reach conclusions by mediation, then it is the duty of the board of mediation to suggest and advise, and if necessary to urge, arbitration.

In the San Francisco case the controversy was between the Southern Pacific Railroad system and its trainmen, involving a consolidation into the main system of all the electric lines. The serious question was as to whether the same conditions of service and pay that

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had previously obtained in the coal or oil service should apply to the men that were employed on the electric lines of the system.

The work involves the examination of a great many witnesses, and of course hotel bills, and sometimes the employment of statistical experts—labor experts; but the serious cost is in the arbitrations.

For four years prior to becoming commissioner of mediation I was chosen perhaps more frequently than any other man as chairman of arbitration boards, and held arbitrations throughout the country. I suppose it was that fact which brought me to the attention of the President and brought about my appointment before I could even let my friends know that I wanted the appointment.

This act, differently from the Erdman Act, which provided for three arbitrators, provides that by agreement between the parties they can have either six arbitrators or three, and the arbitrators serve at such compensation as the board of mediation and conciliation shall fix and agree upon with them. Right at that point we have our most serious difficulty. I once held an arbitration in Chicago, under the old law, where there were 51 railroads involved, and all the firemen and enginemen west of the Mississippi River, including the Illinois Central on this side of the river. I was 41 days holding that arbitration, and I received for it $410. The limit under the old law was $10 a day for the chairman of the board of arbitration and his colleagues. This act provides that the mediation board shall arrange with the arbitrators for such pay as can be agreee upon.

The board which is holding its sessions in New York to-day is composed of such men as Mr. Atterbury, vice president of the Pennsylvania Railroad; Mr. Shepherd, one of the vice presidents of the railroad trainmen; Mr. Seth Low, ex-mayor of New York; and Dr. Finley, president of the University of New York. Those men will either serve for nothing or they will not serve for $10 a day.

What are we to do? Even at $10 a day, the aggregate expense for six arbitrators would be $60 a day; and their hotel bills, traveling and incidental expenses, which the law provides for, will amount, as experience shows us, to about $12 a day. There is a further sum of $72 a day, which, added to the $60 a day I have referred to, amounts to $132 a day that this board is costing, besides the other cost which the law imposes of the complete stenographers' record, which in that case will cost not less than $2,500.

That arbitration alone, for 45 days, the limit of time which is imposed by the law—and it will certainly take 45 days, if it is not extended by consent of all the parties—will cost not less than $8,000. Its cost is infinitesimal, however, when we reckon against it what it does, the results that come out of it, the strike that is prevented, and all that sort of thing.

I have just approved the arbitration account of the Chicago and West Indiana Belt Line, at Chicago, of eighteen hundred and odd dollars, which was conducted at very small cost. Some of the arbitrations of which I was chairman, directing my efforts toward economy at every point, have cost as much as $4,500.

There are 276 independent railroads in this country. There are 360,000 miles of railroad. There are 1,856,000 employees. There is not a day that there are not telegrams or letters on my table when I get there in the morning calling upon us to settle some controversy. Frequently we can do it by correspondence. It is astonishing to

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see the readiness with which these labor organizations and railroads, after having contested over these matters, and reached the point, sometimes, of very extreme differences, will fall into the spirit of this law, and accept the services either of myself or of my assistant or Judge Knapp of the Commerce Court who, fortunately for us, lately has not had other engagements to prevent, and has filled some of these appointments. He always meets with us when we have a board meeting in Washington.

We have not had time to hire a clerk, or to rent a room, or to buy a piece of furniture. We have had some letterheads printed, and that is all the money we have spent up to the present time, because I have been in one State and Mr. Hanger has been in another practically all the time.

I am not here for the purpose of asking for any increased appropriation for salaries, or for clerk hire, or anything of that sort—rents, furniture, etc. The $25,000 will take care of that by judicious management; but you can see how three or four arbitrations will take $25,000.

Senator OVERMAN. How much have you under the Erdman Act?

Mr. CHAMBERS. Under the Erdman Act the money was appropriated at different times, Senator. I can not tell you exactly; sometimes it was $10,000 and sometimes $15,000.

Senator OVERMAN. Can you use that?

Mr. CHAMBERS. We have taken over all the work of the Labor Bureau as applied to railroad arbitrations and mediations, besides the expenses of arbitrations, which were formerly conducted independently.

Senator OVERMAN. You have had appropriated, under this general act, $25,000?

Mr. CHAMBERS. Yes, sir.

Senator OVERMAN. The last appropriation bill carried a sum for the execution of the Erdman Act. How much was that? Do you know?

Mr. CHAMBERS. No, sir; I did not have charge of that.

Senator OVERMAN. Are you not entitled to that?

Mr. CHAMBERS. I was simply employed as chairman of the board of arbitration, and received my compensation in that way.

Senator OVERMAN. Why can you not use that fund?

Mr. CHAMBERS. None of that is left. It is exhausted. I think there is two or three hundred dollars of it, perhaps; but that expired last year, when this board was created.

Senator OVERMAN. Was not this board created since the 1st of July?

Mr. CHAMBERS. The act was passed on the 15th day of July, and it carried an appropriation of $25,000.

Senator BRYAN. Is there not a provision in this bill that any unexpended balance of that $100,000 is made available for this fiscal year?

Mr. CHAMBERS. We have nothing to do with that appropriation, Senator. The Department of Labor and the Commissioner of Labor, who have all the mining, factory, and industrial matters, get that.

Senator BRYAN. Oh, I see.

Mr. CHAMBERS. No part of that $100,000 belongs to us. The only appropriation for the Board of Mediation and Conciliation, which

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was created under the act of July 15, 1913, is the $25,000 of which I have spoken.

Senator PERKINS. Several members of the Interstate Commerce Commission—Judge Prouty and others—are members of this arbitration board. Do they draw two salaries?

Mr. CHAMBERS. No, sir; they have no connection with this board now, Senator. This is entirely a new law. The only salaried officers are the Commissoner of Mediation, which office I hold, and the assistant commissioner, Mr. Hanger. Then a board of mediation is provided for, composed of the Commissioner of Mediation and two officers of the Government, who have been confirmed by the Senate, designated for that purpose by the President, who serve without salary. Judge Knapp is a member of the board, and the President has not yet designated the third member of the board, because it has not seemed necessary to have the third; but whoever he is, he serves without salary.

Senator OVERMAN. Here is what I want to call your attention to in the bill as it comes from the House, Judge Chambers:

> Any unexpended balance on July first, nineteen hundred and thirteen, of the $100,000 appropriated for the Commission on Industrial Relations for the fiscal year ending June thirtieth, nineteen hundred and thirteen, is made available for the fiscal year nineteen hundred and fourteen.

Mr. CHAMBERS. Yes, sir; but we have no relation at all to that, Senator.

Senator BRYAN. He says they get no benefit from that.

Mr. CHAMBERS. The Board of Mediation and Conciliation is an independent board.

Senator OVERMAN. I understand that; but here this act gives you that.

Mr. CHAMBERS. No; it does not. How does it?

Senator OVERMAN. Under the head of "Commissioners of conciliation" it says that any unexpended balance on July 1 of this year of the $100,000 appropriated for the Commissioner of Industrial Relations for the fiscal year ending June 30, 1913, is made available for the fiscal year 1914.

Mr. CHAMBERS. Yes, sir; but that is for the conciliation in the Department of Labor.

Senator OVERMAN. The $100,000 was given for the Erdman Act board, while you got only $25,000?

Mr. CHAMBERS. No, sir; not for the Erdman Act board at all. That is a mistake. That $100,000 goes to the Department of Labor.

Senator OVERMAN. I remember that we have appropriated, every year since I have been on the committee, so much money for the administration of the Erdman Act.

Mr. CHAMBERS. Yes, sir; but that has been sometimes $10,000 and sometimes $15,000, according to the estimate of what the administration of the Erdman Act would cost. The Erdman Act carried no expenses, Mr. Chairman, except the expenses of arbitration. There were no salaries paid out of it. There were no traveling expenses. There was nothing of that sort.

Senator OVERMAN. Oh, I see; the money was spent in the way of a per diem?

Mr. CHAMBERS. Yes, sir; it was simply to pay the per diem of the arbitrators, and it rarely ever exceeded fifteen or twenty thousand dollars.

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Senator OVERMAN. This refers to the Commission on Industrial Relations. That is not under the Erdman Act?

Mr. CHAMBERS. No; that has no connection whatever with us. We are without sufficient experience even to make anything approximating an accurate estimate; but the $25,000 which is appropriated by the act of the 15th of July, I think, with economical control of it, will be enough to pay the expenses of the Board of Mediation and Conciliation, including the two salaries of the commissioner and the assistant commissioner, which amount to half of that sum, $12,500.

If the Commerce Court is not continued—I am making no argument that way; if I had the opportunity, I would make the argument the other way—we will probably fall heir to all their furniture. We will need everything of that sort, because at present we are being taken care of in certain rooms of the Commerce Court, which are furnished entirely to our satisfaction, and all that furniture belongs to the Government.

Senator OVERMAN. It is very handsome furniture; is it not, Judge?

Mr. CHAMBERS. It is handsomer furniture than the Board of Mediation would buy if we were starting out new, but it is nice furniture. It is as good as the furniture in this room. At present we are spending nothing for clerk hire, because they have their force there.

Senator OVERMAN. That force has nothing to do except your work. I have no doubt they are busy for you, but they do not have to do their own work.

Mr. CHAMBERS. I can not say about that.

Senator OVERMAN. They have only seven cases up there. What do the clerks have to do?

Mr. CHAMBERS. I am not familiar with that, sir; but that is the reason we have been able to get along so far at such small expense.

Senator OVERMAN. I understand, Judge, but I am trying to get a little information on the outside. By the way, how many clerks have you up there?

Mr. CHAMBERS. In my board?

Senator OVERMAN. No; I am talking about the Commerce Court.

Mr. CHAMBERS. I have no idea, sir.

Senator OVERMAN. A number of them?

Mr. CHAMBERS. We are using two of them. I do not know how many there are there; but we shall need two clerks if we are deprived of their use.

Senator OVERMAN. How much do you think you ought to have, Judge Chambers?

Mr. CHAMBERS. We ought to have not less than $25,000.

Senator OVERMAN. $25,000 more?

Mr. CHAMBERS. Yes, sir. It will take this $25,000 to pay for the things I have mentioned. I have a little statement here showing you what we have expended out of the $25,000 up to the present time.

Senator OVERMAN. The House have given you only $5,000?

Mr. CHAMBERS. The House have not given us anything.

Senator OVERMAN. They have given you $5,000.

Mr. CHAMBERS. No.

Senator OVERMAN. Oh, yes.

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Mr. CHAMBERS. Oh, no, sir. If they did, they did it without my knowing anything about it.

Senator OVERMAN. I think it is for the rent of a building.

Mr. CHAMBERS. No, sir; we have not anything, Senator, except the $25,000 I mentioned.

Senator OVERMAN. There is $5,000 here for rent for the balance of the fiscal year 1914.

Mr. CHAMBERS. For whom?

Senator OVERMAN. For the Department of Labor.

Mr. CHAMBERS. We have no relation whatever to the Department of Labor, sir. You may remember that the Secretary of Labor made a very strong effort to have this Board of Conciliation and Mediation a part of the Department of Labor, but that was not done.

Senator OVERMAN. I will read you what the bill says:

Commissioners of conciliation: To pay the expenses of commissioners of conciliation in labor disputes, whenever appointed in pursuance to section eight of the act, etc., $5,000.

Mr. CHAMBERS. Yes; that is to be used whenever a controversy arises at a mine, for instance, as in West Virginia or Pennsylvania or anywhere else, or in any industrial enterprise in which the Secretary of Labor appoints a conciliator to settle the trouble. That is what that $5,000 is for. We have nothing in the world to do with that.

Senator OVERMAN. You have nothing to do with it?

Mr. CHAMBERS. No, sir; nothing at all. Our jurisdiction is limited entirely to mediation and conciliation in railroad disputes. The appropriation of $25,000 is to pay the expenses of the commissioner, the assistant commissioner, clerk hire, office rent, furniture, stationery, and other necessary expenses.

Senator OVERMAN. So you are not mentioned in this bill at all?

Mr. CHAMBERS. No, sir; we are not mentioned in the House bill at all. We are such a new creation that we did not have an opportunity to make estimates to send to the House committee.

Senator OVERMAN. You call yours a board of mediation and conciliation?

Mr. CHAMBERS. A Board of Mediation and Conciliation.

Senator OVERMAN. This is for the Commissioners of Conciliation. That is a different thing?

Mr. CHAMBERS. That is a different thing; yes, sir.

Senator OVERMAN. They ought to change their name, because that is what has bothered me all the time.

Mr. CHAMBERS. They ought to change theirs.

Senator OVERMAN. Yes, that is what has been worrying me all the time. It says "conciliation," etc., and I thought that meant "mediation." So you have nothing to do with that conciliation matter?

Mr. CHAMBERS. No, sir.

Senator OVERMAN. I wish you would tell them to change their name, because it bothers me continually.

Mr. CHAMBERS. We have more work than we can very well do now; but later, I suppose, Congress will turn over all the work to this board.

Senator OVERMAN. Will you prepare an amendment and send it down to the clerk of the committee?

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Mr. CHAMBERS. Yes, sir. Will to-morrow morning be time enough?

Senator OVERMAN. Yes, sir.

Mr. CHAMBERS. I suppose in time, if this board proves to be what the public hopes of it, all this other conciliation work will be transferred to the board. It does create a conflict. We are constantly getting letters from people asking our mediation in those other fields of work.

(Thereupon, at 12.30 o'clock p. m., the subcommittee took a recess until 2 o'clock p. m.)

(The subcommittee reassembled at 2 o'clock p. m., upon the expiration of the recess.)

STATEMENT OF SENATOR HENRY L. MYERS.

The ACTING CHAIRMAN (Senator Overman). Senator Myers, we will hear you.

Senator MYERS. Very well. I will not take much time, but, Mr. Chairman, I have a matter of very serious importance to lay before the committee. It is an amendment to the bill that I submitted in the Senate on the 10th day of July last. I believe it properly falls under the definition of the term "deficiency." It is really and truly a deficiency to make up something where there was too little money appropriated by a previous Congress. It relates to the Corbett Tunnel.

Senator OVERMAN. That is the matter we had the fight over in the Senate.

Senator MYERS. Yes; and it was passed by the Senate over the veto of the President, and finally it was passed in a different form appropriating $42,000 for the payment of bona fide claims.

Senator OVERMAN. My impression is that it passed the Senate and the House and came back vetoed.

Senator MYERS. It passed the Senate over the veto, but lacked a few votes in the House. It was then introduced in a slightly different form and passed both the House and the Senate, and President Taft finally approved it.

Senator OVERMAN. The bill did not appropriate enough money?

Senator MYERS. It did not appropriate enough. It appropriated only $42,000, and the bona fide and just claims amount to $57,000.

Senator OVERMAN. Have you offered it before?

Senator MYERS. Yes; in the last session of the last Congress I offered an amendment practically just like this to give an additional $12,000. It passed the Senate again.

Senator OVERMAN. On an appropriation bill?

Senator MYERS. On an appropriation bill. It was a deficiency of $12,000, but in the hurry it was dropped out in the House and went into conference. Practically the same amendment passed the Senate once before unanimously without any objection at all.

The situation in a nutshell is simply this, if I can compress it into that. All the known claimants have practically filed claims in the amount of $57,000. Only $42,000 was appropriated. If this amendment is adopted it will put a stop to the filing of claims. It will say that people are estopped and no more claims can be filed. The Interior Department then will be able to say that the filing of claims

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has been stopped. By this amendment no more claims can be filed for that purpose. It limits the claims in amount to $57,000. If the full amount, $57,000, is appropriated, we can go to work and pay dollar for dollar just as fast as the claims are proven under the rules and regulations adopted by the Interior Department. The claimants will only have to prove their claims, and they will know that as fast as they can prove their claims they will be paid dollar for dollar for the very patent reason that there being only $57,000 of claims filed and the filing of claims is then stopped and there being $57,000 appropriated, they are able to pay dollar for dollar every claim that is proven and they will go to work and pay them.

But under the present state of affairs the time for filing claims is not limited. Claims have been filed for $57,000 and the amount appropriated is only $42,000, and they will not pay a cent to anybody.

Senator OVERMAN. Suppose a man holds a valid claim, why should he be barred?

Senator MYERS. All claims must be proved. When there is not enough the payments may be pro rated, but they will not pro rate so far. At any rate they have not enough to pay them all and they will not do anything until they get enough to pay all the claims.

Senator OVERMAN. And you would hereafter stop anybody from proving his title if he could show that he has a valid claim?

Senator MYERS. It has been seven years since the work was stopped. It has been nearly two years since the matter was first taken up in Congress. It has been something over a year since the first appropriation was made. The claimants have had ample time. There ought to be a statute of limitations. There ought to be a limit. This has been discussed and the department feels that the time has come to draw the line. People should not be allowed to file any more claims. There must be an end to it at some time.

As to this particular amendment it was practically approved by Mr. Wells, the chief law officer of the United States Reclamation Service. On the 26th of March, 1913, he wrote to Mrs. Macdonald as follows:

DEPARTMENT OF THE INTERIOR,
Washington, March 26, 1913.

Mrs. KATHERINE MACDONALD,
Hotel Driscoll, Washington, D. C.

DEAR MADAM: In accordance with your request to the Secretary of the Interior I have redrafted Senate amendment 33 to the deficiency bill in the last Congress, providing an additional appropriation for the payment of the Corbett Tunnel claims (H. R. 28858), in such form that, if enacted, it will enable the persons who procured the passage of public resolution 56, approved August 24, 1912, to secure fair compensation for their services therein in the absence of any contract with the claimants. This has been done by rewriting the last proviso, following very closely the rough draft made by Senator Cummins for you. You will note that the first proviso has also been changed so as to bar all claims not presented before the passage of the proposed statute.

They suggest the bar down there. The suggestion comes from the department.

I inclose the original bill, my redraft of amendment 33, and Senator Cummins's rough draft above referred to.

Sincerely, yours,

PHILIP T. WELLS,
Chief law officer, United States Reclamation Service.

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The amendment that I submitted comes from the department.

Senator OVERMAN. Here is a letter from the department.

Senator MYERS. What does the department say about it, Senator? I have not seen the letter.

Senator OVERMAN. They are averse to the payment of the claims.

Senator MYERS. They have fought these payments from the beginning, but I want to know what they say.

Senator OVERMAN (reading):

I am in receipt of your reference of July 8, etc.

The original resolution appropriated from the reclamation fund the sum of $42,000 or so much thereof as may be necessary for the payment of certain accounts of labor, supplies, materials, or cash furnished to the contractor or subcontractor on the Corbett Tunnel of the Shoshone project in the State of Wyoming, constructed under the provisions of the reclamation act of June 17, 1902.

The proposition of making this original appropriation of $42,000 was before the department at various times and the views of the then Secretary were expressed in a report of February 26, 1912, to the Committee on Irrigation and Reclamation of Arid Lands in connection with S. 4862. In that report the department made an adverse recommendation. Subsequently the bill was passed and vetoed by the President July 18, 1912. Subsequently public resolution No. 56 was passed providing for the appropriation in question.

I know nothing further as to this measure or its merits.

This letter is signed by A. A. Jones, Acting Secretary of the Interior. He does not say whether he is opposed to it or for it.

Senator MYERS. The proposition is just this. Congress has appropriated $42,000 for the payment of these claims. Unfortunately that was only the amount total of all the claims known at that time, and the amount appropriated was not quite large enough. There have been further claims to the amount of $15,000 filed. They will have to be proved just the same as a claim before the Court of Claims. If the appropriation of $42,000 is not quite enough, should not a little more be appropriated to finish it?

Senator OVERMAN. Has the Secretary passed on the claims?

Senator MYERS. He has passed on some of them, as fast as the people have come forward with their proof.

Senator OVERMAN. I mean, has he passed upon the validity of the present claims to the value of $57,000.

Senator MYERS. He has passed on the validity of all of them that have been waiting attention.

Senator OVERMAN. I wish you would see the Secretary and find out how many of these claims are valid.

Senator MYERS. I will be glad to do so.

Senator PERKINS. We thought we appropriated the full amount when we gave $42,000 for this purpose.

Senator OVERMAN. A great many of the claims may not prove to be valid.

Senator MYERS. This amendment draws the line, and no more can be filed.

Senator OVERMAN. Suppose that $42,000 should prove to be enough?

Senator MYERS. Then not one dollar extra would be paid out. Until the amendment passes they can not pro rate, and the amendment will draw a line on future claims.

Senator OVERMAN. I will ask the clerk to draw up a letter to the Secretary of the Interior and ask him how many of these claims have been approved and how much money it will be necessary to appro-

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priate above the $42,000 to pay the valid claims, and whether he deems it necessary at this time to make an additional appropriation to pay the valid claims. We ought to have some information from the department on which to act.

Senator MYERS. I would have you understand that the amendment proposes to appropriate only this amount or so much thereof as may be necessary, and no more will be paid out than is necessary to claimants who have proved good their claims.

Mrs. Macdonald holds the assignment of $21,000 worth of labor claims. She has not located all the laborers yet and it may take quite a time to prove them. I will bring the matter down to this point, that if you are not satisfied with the bona fides of the proceeding or the legitimacy thereof——

Senator OVERMAN. There is no question about their being bona fide claims. I heard your speech on the subject, and I voted with you. I think the claims ought to be paid, but we do not want to appropriate any more money than is necessary to pay the claims.

Senator MYERS. That is true, and if it does appear that the claims filed will probably take more than $42,000 it seems to me nothing but a matter of right and principle that enough more should be appropriated to finish it. If some should be paid all should be paid.

Senator OVERMAN. That is true. I take it for granted that the Secretary of the Interior has investigated every claim filed.

Senator MYERS. He will report to you, I suppose, on the progress he has made and the proof.

That is all I have to present. I thank you.

STATEMENT OF HON. GEORGE W. TAYLOR, REPRESENTATIVE IN CONGRESS FROM ALABAMA.

Representative TAYLOR. Mr. Chairman and gentlemen, I desire to make a statement in regard to an amendment introduced by Senator Bankhead to House bill 7898, the bill which you have under consideration.

The facts in regard to this amendment are simply these: The last river and harbor bill made appropriations for the Tennessee River, $385,000 between Chattanooga, Tenn., and Browns Island, Ala., and $100,000 between Riverton and Florence. Ala.

Since the bill was passed the amount appropriated for that portion of the river between Riverton and Florence has been practically exhausted. The engineers so notify the department, and they state that by the 1st of October they will have no more funds for that work in the river and that work there ought to be continued if practicable. They further report that the portion of the river between Chattanooga and Browns Island will not be in condition to utilize the money on hand and unexpended for probably a year, the unexpended balance being $377,826.19 on August 31, 1913. They have suggested that in order to keep the work continued between Riverton and Florence they be authorized to apply $150,000 of this unexpended balance now lying idle to work between Riverton and Florence.

Senator OVERMAN. How much is the appropriation?

Representative TAYLOR. The appropriation between Riverton and Florence was $100,000.

Senator OVERMAN. Is this estimated for by the department?

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Representative TAYLOR. It is not a question of an estimate. It was appropriated in the river and harbor bill of February, 1913. They are not asking for any more money. They ask the privilege of transferring from one section of the Tennessee River to another section of the Tennessee River a part of an unexpended balance in order to keep the work continuously going between Riverton and Florence while the section between Chattanooga and Browns Island is getting ready for work to be done.

Senator OVERMAN. Has this matter been before the House committee?

Representative TAYLOR. The pending amendment has not been before the House committee.

Senator OVERMAN. Why did you not offer an amendment in the House?

Representative TAYLOR. My attention was not called to the subject until after the deficiency bill left the House.

Senator OVERMAN. I understand, but why was it not introduced in the House and referred to the Committee on Appropriations there?

Representative TAYLOR. I think you will find by the date that the bill left the House before the amendment was introduced. The money has already been appropriated in the last river and harbor bill.

Senator PERKINS. It is a question, it seems to me, for the Chief of Engineers and the Secretary of War to report upon.

Representative TAYLOR. I think you referred the joint resolution and this amendment to the Chief of Engineers and they reported on both to your committee. On the 21st of August Senator Bankhead introduced the joint resolution and it was referred to the Committee on Commerce. On the 26th of August a joint resolution was introduced in the House and referred to the Committee on Rivers and Harbors.

Senator OVERMAN. What was done with that?

Representative TAYLOR. Nothing. We have not had a meeting of the committee since the 26th of August.

Senator OVERMAN. Has it been referred to the War Department?

Representative TAYLOR. It has been referred to the War Department and approved.

Senator OVERMAN. Let us see what they say about it.

Representative TAYLOR (reading):

WAR DEPARTMENT,
September 18, 1913.

To the CHAIRMAN COMMITTEE ON APPROPRIATIONS,
United States Senate:

This amendment intended to be proposed to the pending urgent deficiency bill (H. R. 7898) is practically identical in substance and purpose with Senate joint resolution 67, current session, concerning which report was made by this department under date of the 9th instant in response to a request from the Senate Committee on Commerce. A copy of that report is herewith, and I beg to renew the favorable views therein expressed and to add that I see no objection to the enactment of the legislation in the urgent deficiency bill instead of in the form of a joint resolution as originally proposed.

LINDLEY M. GARRISON,
Secretary of War.

Senator OVERMAN. Where is the report on the joint resolution?

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Representative TAYLOR. Here is the report on that resolution:

WAR DEPARTMENT, *September 9, 1913.*

To the CHAIRMAN COMMITTEE ON COMMERCE,
United States Senate.

1. This department sees no objection to the enactment by Congress of the legislation proposed in the accompanying Senate joint resolution 67, Sixty-third Congress, first session, but on the contrary believes that it is highly desirable since it will admit of the uninterrupted prosecution of work on that section of the Tennessee River between Florence and Riverton, for which funds heretofore provided will soon be exhausted necessitating suspension temporarily of the work on this section pending specific appropriation by Congress.

2. ——

Senator OVERMAN. It says "pending specific appropriation by Congress." So the appropriation has not been made.

Representative TAYLOR. Yes; it has been made in the last river and harbor bill; it is now asked to be allowed to be used there pending a specific authorization by Congress for that section of the river.

Senator OVERMAN. I say an appropriation has not been made for it.

Representative TAYLOR. But the appropriation has been made for the section of the river between Chattanooga and Browns Island.

Senator OVERMAN. I understand.

Representative TAYLOR. And there has been an appropriation made for the section between Riverton and Florence, but that fund is exhausted.

Senator OVERMAN. Now you propose to take the money appropriated for the portion of the river between Chattanooga and Browns Island and carry it down to Riverton?

Representative TAYLOR. Yes; it is to keep up continuous work on the river. What difference does it make to what section of the river it is applied, whether at one end of the river or another?

Senator OVERMAN. That is what I do not know.

Senator PERKINS. Senator Clarke, the chairman of the Committee on Commerce, has had this matter under consideration. I do not know what he did about it.

Senator OVERMAN. There is an appropriation, I understand, for the river between Chattanooga and Browns Island. This is a proposition to divert $150,000 of that appropriation to be used between Riverton and Florence.

Representative TAYLOR. Yes; because it can not be used in any other portion of the river at this season.

Senator OVERMAN. That means a deficiency of $150,000 for work to be done between Chattanooga and Browns Island, and it would be equivalent to a new appropriation.

Representative TAYLOR. I hardly think it would be equivalent to it.

Senator OVERMAN. Of course if we take $150,000 from the appropriation for one end it will have to be paid back at some time.

Representative TAYLOR. Yes; if the propositions were not identical, if not for the same river improvement. If this was for the Mississippi River and we were going to divert it from the Mississippi River to the Savannah River that would be the case, but this is only a part and parcel of the same river, and the same improvement the Government is operating on, and I do not think that would apply.

Senator OVERMAN. But the Secretary of War says that this money may be used pending another appropriation of $150,000.

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Representative TAYLOR. I understand that, but if the Secretary of War happens to use language which at first blush seems to make a difference, the real statement of the matter, you should not be guided by that. The proper words would have been "specific authorization," instead of "another appropriation."

Senator OVERMAN. The joint resolution says "unexpended balance." There is no unexpended balance here.

Senator PERKINS. But Mr. Taylor is addressing himself to the fact that this is a deficiency.

Senator OVERMAN. This is a deficiency bill, and there is no question but that you propose that the appropriation shall be absolutely diverted.

Representative TAYLOR. It is a deficiency bill and this is a deficiency situation. It is a situation in which you find that work to be done at one place on a river improvement can not be done there and it can be done somewhere else on the same river.

Senator OVERMAN. The proposition is to take a certain amount of money from one point in the river and spend it at another. I do not know what the people will say about it at the other end of the line.

Representative TAYLOR. At which other end of the line?

Senator OVERMAN. Between Chattanooga and Browns Island.

Representative TAYLOR. I have consulted with those people. They are represented here by my colleague, Mr. Moon, Mr. Moon is entirely willing that it shall be done. I would not press the subject until he gave his consent. I think that is the duty one colleague owes to another.

Senator OVERMAN. Do you know what the Tennessee Senators will say about it?

Representative TAYLOR. I do not know, but I assume that the Senators would allow the immediate representative, Mr. Moon, to guide them in a matter of that kind.

Senator OVERMAN. That is all right in the House, but I am talking about the Senate.

Representative TAYLOR. That is what I am speaking about. The Senators from Alabama would permit the Members of the House from Alabama to decide such questions as to matters within their respective districts.

Senator OVERMAN. I speak of it as a matter of courtesy to the Senators.

Representative TAYLOR. I think the same courtesy would extend to Mr. Moon, who is the Representative immediately interested in Tennessee.

Senator OVERMAN. But what will the Tennessee Senators say?

Representative TAYLOR. I suppose they would follow Mr. Moon if there is any question as to it. I did not think there would be any question, and I did not think that there would be any necessity whatever to speak to anybody except to Mr. Moon. It is entirely in his district.

Senator OVERMAN. The question is whether there will be a deficiency next year and that Congress will be expected to appropriate $150,000 because we divert this appropriation to another fund?

Representative TAYLOR. Congress will be expected in the next river and harbor bill to replace the sum where it was taken from and put it in a place where it will be used when that section of the river

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is in a condition to be improved. There is no question about that.

Senator OVERMAN. What are they doing at that end of the line from Browns Island to Chattanooga? Are they working?

Representative TAYLOR. Not much, because they have not made arrangements to work. I do not know the details of the situation, but this is the statement made by the War Department:

2. The action proposed is not an actual appropriation of money, but simply authorizes the transfer of funds already appropriated for one section of the river, where, owing to delay incident to the acquisition of land needed for the contemplated improvement, they can not now be used with advantage, to another section where they can be so used. In order that there may be no misunderstanding as to the intent of this legislation, it is suggested that the title of the resolution be changed to read—

That suggestion is made as to Senate joint resolution No. 67. That is a clear statement of the proposition. It is delayed in account of the difficulty in acquiring title to the land. The information is that such delay will continue until after the reasonable expectation of the passage of another river and harbor bill, so that there will be nothing done on that portion of the river. The improvement of the Tennessee River was intended to be done as a whole, and it matters little whether money may be applied to any one part of the river more than another, except that the engineers now recommend that the work be continued between Riverton and Florence, but the specific appropriation for that reach of the river is about to be exhausted.

Senator OVERMAN. What is the total amount appropriated for the improvement of the river from Chattanooga to Browns Island?

Representative TAYLOR. I do not remember. I did not expect to appear before you and did not have that matter in mind. I think the unexpended balance there is something over $300,000.

Senator OVERMAN. Read the letter in full that you started to read.

Representative TAYLOR. I did read the letter in full.

Senator OVERMAN. You read to the point where it was suggested that the title of the resolution be changed, and there you stopped.

Representative TAYLOR. Continuing to read from the report on joint resolution No. 67:

Joint resolution authorizing the application of a portion of funds heretofore appropriated for improving Tennessee River between Chattanooga and Browns Island to work on said river between Florence and Riverton.

That makes clearer and plainer the real purpose of this matter. That suggestion was made in regard to the Senate joint resolution No. 67. Now, you are not considering that, you are considering an amendment to the deficiency appropriation bill.

Senator OVERMAN. Have you read the whole letter?

Representative TAYLOR. Yes; the whole letter. It is signed Henry Breckinridge, Acting Secretary of War. The Secretary of War attaches this letter to his report and remarks on the pending amendment. He approves the pending amendment.

You desired to know the amount appropriated, and I was not willing to give my memory on the subject. I have the act in hand now. Here is the 1913 appropriation:

Improving Tennessee River, Tennessee, Alabama, and Kentucky: For maintenance, and continuing improvement in accordance with the report submitted in House Document numbered Three hundred and sixty, Sixty-second Congress, second session, as follows: Above Chattanooga, Tennessee, $510,000; between Chattanooga, Tennessee, and Browns Island, Alabama, $385,000; between Florence and Riverton, Alabama, $100,000; below Riverton, Alabama, $110,000; in all, $1,105,000.

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Now, there has accumulated in previous appropriations for the improvement between Chattanooga and Browns Island quite a fund—more than $150,000, as it appears.

Senator OVERMAN. This diversion of the appropriation would take about all that has been appropriated for the improvement of the river between Chattanooga and Browns Island?

Representative TAYLOR. It would not. There is more than $150,000 to their credit. The exact unexpended balance on August 31, 1913, is $377,826.19.

Now, the amendment only says "that the sum of $150,000, or so much thereof as may be necessary, of the unexpended balance of the appropriation heretofore made for the improvement of the Tennessee River between Chattanooga, Tennessee, and Browns Island, Alabama," shall be transferred. It does not make any difference what that unexpended amount is, it applies only to the appropriation of $150,000, or so much thereof as may be necessary. I am quite sure that there is more than $150,000.

Senator OVERMAN. You have spent $100,000 between Florence and Riverton.

Representative TAYLOR. And we could probably spend $500,000 between now and the 1st of next March.

Senator OVERMAN. How would you expend it?

Representative TAYLOR. In blasting and clearing the channel.

Senator OVERMAN. In making locks?

Representative TAYLOR. No; in clearing and deepening the channel This appropriation is for open-channel work and not for locks.

Senator OVERMAN. You must have spent the money very quickly. It has been only a little over six months since the act was passed.

Representative TAYLOR. Prior to this time it has not been spent very quickly. For years the work has been very much delayed. Congress would appropriate money and it would lie there unexpended, because they could not get contracts within reason to do the blasting and dredging. The Government engineers, several years ago, decided to build a Government plant.

Senator OVERMAN. Then that is how this money has been spent, because $100,000 could not have been spent in that time on ordinary work.

Representative TAYLOR. Please do not draw that conclusion against them, because it is not true. They had a plant there that enabled them to use that amount of money—$100,000—advantageously and quickly.

Senator OVERMAN. In four months' time?

Representative TAYLOR. Yes; since the last river and harbor bill of February, 1913.

Senator OVERMAN. I am speaking of the appropriation of $100,000 made in the last act.

Representative TAYLOR. That $100,000 has been utilized by working the plant up to its full capacity, and will be exhausted by October 1. It is a very fine plant and it can be moved from one part of the river to another. Right now they can not move it from its place between Florence and Riverton because of shoals and low water. They invested in that plant with the authority of law and because otherwise they could not do anything at reasonable contract cost. The plant saved money for the Government. It clears

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out all the shallows between Florence and Riverton. A great deal of the material has to be blasted. By means of this plant they have been able to do the work rapidly, and they will do it more rapidly still if they have the use of this money that is now idle.

Senator OVERMAN. Browns Island is in Alabama?

Representative TAYLOR. Browns Island is in Alabama, and Chattanooga is in Tennessee.

Senator OVERMAN. How far is it from Browns Island to Chattanooga?

Representative TAYLOR. I would say that it is about 170 miles from Browns Island to Chattanooga.

Senator OVERMAN. All right; we will give the matter our careful consideration.

Representative TAYLOR. I hope you will.

STATEMENT OF HON. JOHN E. RAKER, REPRESENTATIVE IN CONGRESS FROM CALIFORNIA.

Representative RAKER. Mr. Chairman, if the committee please, Senator Perkins presented an amendment to the bill before you, H. R. 7898, relating to the deficiency at the Fort Bidwell Indian School in California. It provides under the heading "Indian affairs":

> That the unexpended balance remaining upon the books of the Treasury on June thirtieth, nineteen hundred and thirteen, of the appropriation of $15,000 for improvements at Fort Bidwell School, in California, as follows: $7,000 for the erection and construction of a water and electric-light system; $3,000 for sewerage system; $3,000 for a steam laundry; and $2,000 for a complete heating system of the school and accessory buildings," under the act of August twenty-fourth, nineteen hundred and twelve, entitled "An act making appropriations for current and contingent expenses of the Bureau of Indian Affairs, for fulfilling treaty stipulations with the various Indian tribes, and for other purposes, for the fiscal year ending June thirtieth, nineteen hundred and thirteen" (Thirty-seventh United States Statutes, pages five hundred and eighteen to five hundred and twenty), and under the terms of said appropriation of $15,000, is hereby reappropriated and made available for the fiscal year ending June thirtieth, nineteen hundred and fourteen.

To show the reason why I come before the committee, Senators, I will state that I introduced in the House a bill, No. 7825, to cover this same subject, and it was referred to the Committee on Appropriations; but before we could get a report upon the bill it was out of the House. It came out the same day they made a report on the bill. It was necessitated for the reason that they thought they could use the $15,000 which was appropriated especially for this school for the several purposes named, and just before the end of the fiscal year they had used only half, or about half, of the appropriation. They were delayed on account of not getting the engineer to go there and make an examination of the ground and prepare for the work, so they made a verbal contract to complete the work and thought they could go on.

The matter was submitted to the Treasury Department, after the fiscal year ended and the month had passed by, and the Treasury Department held that the money could not be used, that the balance had to go back into the fund; $8,000 of this money was used, and the balance has gone back into the fund. The material is on the ground, the ditches are dug, the other work is ready to construct these buildings, the electric light plant, the sewerage system, etc., but we can not proceed because we have not the money.

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Then Senator Perkins introduced this amendment. The matter was submitted to the Department of the Interior, which made a favorable report to the Committee on Indian Affairs of the Senate and the Committee on Indian Affairs of the House, and urged that the Committee on Appropriations permit this balance of about $8,000 to be used. I saw the chairman of the Committee on Indian Affairs of the House, who left the other day on a visit necessitated by an appointment, and he said: "You may tell the committee in the Senate that I am very much in favor of having this appropriation go through on the urgent deficiency bill."

A brief statement here from the superintendent of the schools, if you will permit me to read it, will show the situation:

If this bill is passed in time so that this money may be expended this fall and winter, not using any of our regular fund for the purpose, we can finish and continue our building-up process at the school.

As perhaps you know, I have been striving in every way possible to make this school an honor to Modoc County instead of a kind of joke.

The department reports favorably on the bill.

Senator OVERMAN. What does the department say?

Representative RAKER. The department says this in a letter to Senator Stone:

I have the honor to acknowledge receipt of request for a report on H. R. 7898, an amendment proposed by Mr. Perkins to the urgent deficiency bill (H. R. 7898), which provides for the reappropriation of the unexpended balance of the $15,000 made available for the use of Fort Bidwell by the Indian appropriation act of August 24, 1912.

Owing to unavoidable delays in making the preliminary estimates with reference to the water system at the Fort Bidwell School, which was one of the four items specifically provided for, the construction contemplated was not completed during the fiscal year 1913. It was only possible to purchase materials amounting to $8,348. Informal agreements were entered into during the last few days of the fiscal year providing for the purchase of these materials, but little or no work toward the construction of the buildings was accomplished. The materials are now on hand. As the Fort Bidwell School is specifically appropriated for there are no funds available for the completion of these buildings except the support fund of the school which amounts to only $20,000 and which is scarcely adequate to maintain 125 pupils, the comptroller having decided that the unexpended balance from the $15,000 from "Indian school and agency buildings" is not available for use during the fiscal year 1914.

It will be necessary to defer all building operations until money becomes available for the completion of these projects. It is very necessary that this work be begun at the earliest practicable date, for delay will result in the deterioration of the materials, and the excavations already made for the water pipes will soon fill up unless properly completed.

I urgently recommend that the provisions of this bill be incorporated in the pending urgent deficiency bill.

Senator OVERMAN. That is sufficient. Is that your home?

Representative RAKER. Yes, sir; that is my home. I have been there for 29 years, living in the sagebrush and in the cold. If we can complete this school by the middle of December, we can use it. Otherwise, we will have to wait until next April.

I thank you, Senators, and you, Senator Perkins, for your kindness to us always.

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STATEMENT OF HON. DAVID J. LEWIS, REPRESENTATIVE IN CONGRESS FROM MARYLAND.

Samuel J. Gompers, acting chief of the Division of Publications and Supplies, Department of Labor, John B. Densmore, Solicitor of the Department of Labor, and Robert Watson, chief clerk of the Department of Labor, appeared.

DEPARTMENT OF LABOR.

Representative LEWIS. Mr. Chairman and gentlemen of the committee, I have but a few words to say. I am interested in the organization and the development of the Department of Labor only as any other Member of Congress would be interested, except pehaps from my peculiar relation to its activities as the chairman of the Committee on Labor of the House. The subcommittee, of course, understands that it is a new department of the Government, and the first attention that it received of a fiscal character was such as it has received on the House side in the initiation of this bill. It came into being under circumstances which make that so.

The Department of Labor submitted estimates as to the necessities for the coming year. I understand that only 16 per cent of the estimates submitted by the department were allowed by the House committee. Mr. Chairman, of course that leads to one of two conclusions, either that the estimates of the Department of Labor were grotesquely extravagant or that the House committee has behaved in an utterly irresponsible way toward that new function of the Government. But I believe neither conclusion is quite correct. I understand the difficulty has been this. The House committee has proceeded upon the theory that the Department of Labor would continue in its housekeeping and fiscal characteristics, a mere existence or at least an incident of the Department of Commerce and Labor, and that the ordinary expenditures that would go for a separate function of the Government would not attend it. I believe perhaps a review of the testimony and the action of the committee itself on the other side of the Capitol will sustain that view.

Mr. President, that view is an utterly mistaken one. The Department of Labor is not in any sense an incident in its housekeeping of the Commerce Department. The separation I believe has already taken place or it is now taking place. Both of them will have to keep house.

Senator PERKINS. When is there to be a new building for the department?

Representative LEWIS. I am not able to answer such questions informingly. I will ask you to reserve them for these other gentlemen; but that the treatment has been utterly insufficient and inadequate appears clearly to me. I mean by that that at points where one who is not specially informed as to the operation and necessities of the department can judge it is apparent that the department has not been accorded by this treatment the sort of assistance it should receive.

I want to refer to a list of publications of the Bureau of Labor as an incident in this subject that I can fully understand. I am free to say, Mr. Chairman, that probably my life history would have been wholly different had it not been for the publications of that bureau. I think I am quite certain in that statement. Yet in the appropria-

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tion made by the Appropriations Committee of the House the usual deficiency to pay for the publication of the studies of the Bureau of Labor has been omitted.

Senator OVERMAN. Do you not suppose that the reason why they did not put that in is because this is not the legislative, executive, and judicial appropriation bill but it is an urgency deficiency appropriation bill? If we begin to put on appropriations for the Department of Justice and other departments we will have another legislative, executive, and judicial appropriation bill here for the fiscal year ending June 30, 1914. This is an urgent deficiency bill and carries only such items as are absolutely necessary, where there is a deficiency.

Representative LEWIS. Mr. Chairman, you may better conjecture as to the reason than I and that may be the reason.

Senator OVERMAN. That is found to be the reason, because here we are making deficiency appropriations, not regular appropriations for departments. We can not put upon it any new legislation making provision for clerks when a new department is formed. We can not add to the force. The representatives of the Department of the Interior come here and ask for a great number of clerks, and here is another department coming and asking for the same thing. I have said to them as I say to you that we are bound by the idea that this is nothing but an urgent deficiency appropriation bill, and we can not legislate here as to clerks and other employees. I suppose that is the reason why the House committee did not make the provision to which you refer.

Representative LEWIS. The Department of Labor is a seven months' old child, and here, a few months before the time——

Senator OVERMAN. That is unfortunate, but they have a right to estimate for the regular legislative, executive, and judicial appropriation bill.

Representative LEWIS. I presume something will have to be done for it is an organic institution at any rate. As an illustrative incident they have denied the Bureau of Labor the usual appropriation for printing. These publications are absolutely necessary. I should like to have this list of estimated appropriations for printing and binding appear as a part of my remarks.

Senator OVERMAN. All right. It will go into the record of the hearings.

(The matter referred to is as follows:)

[Department of Labor, Bureau of Labor Statistics.]

Estimated appropriation for printing and binding, fiscal year ending June 30, 1914.

Miscellaneous printing (blanks, etc.)	$1,500	
Binding	1,500	
Publications (ordered by Congress) purchased for distribution	800	
Bulletins in Printing Office and uncompleted, June 30, 1913	900	
		$4,700
Bulletins (all in preparation or definitely provided for):		
Prices and wages bulletins—		
Retail prices, 1890 to April, 1913	1,650	
Retail prices—6 bulletins (published bimonthly)	10,000	
Wholesale prices—1 bulletin	1,350	
Wages, 1907 to 1912 (500 pp.)	4,100	
Wages, union, 1907 to 1912 (150 pp.)	1,500	
Wages, 1913 (200 pp.)	2,400	
Wages, union, 1913 (70 pp.)	700	
		21,700

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Bulletins (all in preparation or definitely provided for)—Continued.		
Other bulletins—		
Conciliation and arbitration in the building trades	$150	
Workmen's compensation laws of the United States and foreign countries	1,500	
Wheat and flour prices	900	
Butter prices	400	
Conciliation and arbitration in clothing trades	800	
Summary, report on woman and child labor (300 pp.)	2,400	
Governmental aid in housing of working people (200 pp.)	1,400	
Cost of living in Great Britain	450	
Minimum wage laws	750	
Foreign labor laws, Great Britain; Foreign labor laws, Germany; Foreign labor laws, France; Foreign labor laws, Belgium	2,500	
Factory inspection in European countries	1,000	
Factory inspection in the United States	1,000	
Hygiene of the smelting industry	750	
Mortality and morbidity among locomotive engineers	300	
Women in industry (2 bulletins)	1,000	
Hygiene of lead-using trades (2 bulletins)	1,000	
Methods of protecting workers against dust and fumes	300	
Anthrax as an occupational disease in the United States	400	
Causes of mortality in cotton-mill occupations	1,000	
Miscellaneous bulletins (6 issues; 90 pp. each)	3,500	
Bibliography (beginning Jan. 1)	1,100	
		$22,600
Total estimated demands for printing		49,000
Total allotment transferred by Department of Commerce and available		32,500
Estimated demands for printing in excess of allotment		16,500

Representative LEWIS. These are absolutely necessary for the Committee on Labor of the House or for any other students of labor subjects in disposing of matters that come before them. I do not know how we could get along without the publications, the studies, and the researches of the Bureau of Labor of the United States.

I am frank to say, sir, biased as I am in favor of the activities of the Labor Department, that if this policy of treatment is to be continued, I should regard indeed as a great blessing if the statute creating the department were repealed and the old status restored in the Bureau of Labor.

Senator OVERMAN. There are some duplications here to which I wish to call your attention. Your remarks have been exceedingly interesting and you have given a great deal of light on this question. I am going to read some of these estimated appropriations:

Workmen's compensation laws of the United States and foreign countries.

Is not that a duplication? Did we not have all that before our committee?

Representative LEWIS. I think not, Senator. We have some 48 States legislating on the subject and they are taking all kinds of views upon it and need all kinds of examples.

Senator OVERMAN. We have had a volume containing all that matter.

Representative LEWIS. I was not referring to that particular volume.

Senator OVERMAN. The Senate and House under the direction of the Joint Committee on Printing spent $100,000 in getting all this information. This is not the only department that is duplicating

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the work of other departments. Here is an estimate for $1,500 for a work already printed and published.

Representative LEWIS. The committee probably was duplicating the work of the Labor Bureau in this case.

Senator OVERMAN. No, this was done before the Labor Department was established. You remember the workmen's compensation bill?

Representative LEWIS. But I think that work did not give the comparative statutory laws of the different countries of the world and the compensation paid to labor. It may have given some of them.

Senator PERKINS. You asked for $25,000 for printing and binding and the House did not allow you anything?

Mr. GOMPERS. No, sir; they allowed us nothing.

Representative LEWIS. There is a deficiency of $16,000 that has usually been allowed. That is denied at this time.

I ask for the Department of Labor simply that this subject be treated de novo by this committee. It has received no adequate attention on the other side, or it has been treated upon an utterly fallacious basis, in my opinion, on the other side. Therefore I would ask this subcommittee and the committee generally to consider the subject de novo in its entire bearing with reference to the economical interests of this new department of the Government.

Senator OVERMAN Here is another item:

Methods of protecting workers against dust and fumes, $300.

We have a department here that has a current appropriation of two or three hundred thousand dollars for that purpose. That is Dr. Holmes's department. Why should the Department of Labor do that same work?

Representative LEWIS. Is there a duplication of literature in that case? I am not informed.

Senator OVERMAN. Dr. Holmes gets out such information as that

Representative LEWIS. You would not argue, I assume, that the work of this department should be destroyed.

Senator OVERMAN. No; we do not want to destroy it, but we do not want one department to do something that another department is doing. If the Department of Labor does it, Dr. Holmes ought not to do it. That is what I am trying to get at. Why should we give $1,500 to one department for publishing what is issued by another department?

Representative LEWIS. I was not making this the point of resistance for the argument, but I was using it just as an illustration of my own action and my own relation to it. These publications ought to go on continuously. These studies produced by the Labor Bureau ought to be published. Under the bill as it stands the publication is stopped for the want of an appropriate deficiency. I think in the whole history of the Labor Bureau those publications have not been stopped in the past, but they have been going on continuously. I do not understand how a student of labor sociology in the United States can get along without them.

I thank the subcommittee for the attention they have given to me.

Senator OVERMAN. We are very much obliged to you for coming here. I want to state that the question of duplication belongs not so much to this bill as to other bills.

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Representative LEWIS. I think a committee on that subject would be a very good idea.

Senator OVERMAN. I was just thinking that we ought to have a committee to investigate these departments and get the bulletins of each department and see if we can not stop this duplication. Do you not think so?

Representative LEWIS. I think so; and I would be glad to aid in any way I could.

Senator OVERMAN. It looks to me as though if the Department of Labor is doing these things some other department ought not to do them.

Mr. GOMPERS. Mr. Chairman, will you allow me a word here, as I have charge of the publication of those bulletins? I think you are slightly in error in the matter of duplications. The Bureau of Mines bulletin is as to dust and gases, etc., in mines, and this is in relation to dust in machinery, emery wheels, and such things, and to health saving devices. Of course it is an entirely different proposition, and it is not a duplication in the proper sense.

As to the bulletin or workmen's compensation laws being a duplication, that is a matter brought entirely up to date. I understand that it has been carried up to this time and all the acts of the different legislatures are compared with foreign acts and the matter has been carried to date. These bulletins are in the course of preparation. Some of them have been completed and we need the money to print them. It is not a matter of preparing bulletins because they are in the course of preparation now. It is a matter of printing them or otherwise letting them stand, in which case the cost of preparation is lost. That would be a clear loss to the Government because they can not be published unless the money is appropriated for that purpose.

Representative LEWIS. These gentlemen represent the Department of Labor here.

Senator OVERMAN. We are very glad to have them here and will hear them with pleasure.

STATEMENT OF ROBERT WATSON, CHIEF CLERK, DEPARTMENT OF LABOR.

Senator OVERMAN. Gentlemen, the House hearings are very full. I do not want to cut you off at all; but I want you to be as brief as you can, and not repeat what you have already said before the House committee, because we have that. Our time is limited, but I do not want to cut you off at all. I want you to make a full statement of anything you have to say, without repetition of what has been said already.

CONTINGENT FUND, DEPARTMENT OF LABOR.

Mr. WATSON. Mr. Chairman, I desire to state by way of preface that it was the wish of Secretary Wilson to appear here, but he has been unavoidably detained because of illness, so we appear in his absence. I shall endeavor to adhere to the points which we have outlined in the letter which we addressed to Senator Martin, chairman of the committee.

Senator OVERMAN. Yes; I have that letter.

Mr. WATSON. It is a detailed statement as to what we shall need in addition to the appropriation which the House committee granted

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us. We feel that it is of the utmost importance that these amendments be made if we are to continue doing business.

As an instance, I wish to cite the fact that the Department of Commerce is at the present time in the process of moving up to its new building. The plan as outlined by the House committee contemplates that the four bureaus of our department shall go up into that new building.

Senator OVERMAN. Where is the new building?

Mr. WATSON. It is at Nineteenth Street and Pennsylvania Avenue. It is contemplated that the Secretary's office shall be separated from all of the four bureaus. As we have indicated in this letter, we feel that it will be utterly impossible to carry on the business of the department under that plan; and as we are at present situated, we have not enough money in our contingent fund to provide heat, light, and other absolute necessities for the conduct of the department for the ensuing winter.

Senator OVERMAN. What rent do you pay for the building?

Mr. WATSON. For the building where we are at the present time?

Senator OVERMAN. No; the building into which you are going to move.

Mr. WATSON. The House has granted $5,000 for the office of the Secretary. There is no building suitable to our needs which can be had, so far as we have been able to ascertain. I suppose this plan was proposed on the presumption that there would be a building in close proximity to the Commerce Building up there which would enable the Secretary to do business back and forth with the various bureaus. So far as we have been able to ascertain, there is no such building; and even though there were such a building, we feel, as I have stated before, that it would be impossible for him to carry on or to pass upon the immigration matters as the law declares he shall if he were to be separated from that bureau and put into another building.

But the particular point—I do not mean by that that it is of any more importance than the others—is the contingent-expense appropriation. As I say, we have not enough money. We have available at the present time but $1,220, and we figure that if we are to buy things that we absolutely must have to conduct the business of these offices throughout the winter we must have that increased to $29,000, which we have requested.

I have made an itemization of the various expenses we will be called upon to meet and I shall be glad to add it to the record.

(The matter referred to is as follows:)

Itemization of contingent expenses.

Furniture		$9,300
Conveyances		6,500
Overhead expenses:		
Telegraph service	$200	
Telephone service	525	
Car tickets	150	
Foreign postage	75	
Electrical service, fans, light, and power	2,000	
Fuel	650	
Ice	475	
Laundry	200	
Total		4,275

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Miscellaneous expenses:		
Stationery	$1,875	
Additional office equipment for Assistant Secretary and chief clerk	250	
Additional office equipment for Division of Publications and Supplies	400	
Envelopes	2,500	
Paper	1,000	
Total		$5,025
Moving		1,000
Traveling expenses (office of the Secretary)		900
Field investigations (Children's Bureau)		2,000
Total, itemization of contingent expenses		29,000

CLERKS, DEPARTMENT OF LABOR.

Mr. WATSON. The matter of personnel is another one of most pressing importance. As Mr. Lewis stated, the House committee apparently proceeded upon the theory that the Department of Commerce would apportion to us a proportionate amount of the help. Out of a total of 156 employees, however, we got but 16. My office, which is that of the chief clerk, has been provided with no clerical assistants whatever. Consequently I have been put to the necessity of drafting employees from the other bureaus, which are already undermanned. One of them is on record to that effect. The consequence is that they are falling far behind in their work. We have set forth, in the letter to the committee, a list of the personnel which we feel it will be necessary for us to have.

Senator OVERMAN. Is that all set out here in this letter to Senator Martin?

Mr. WATSON. Yes, sir; all that part of it.

Senator OVERMAN. Suppose you confine yourself to the items that you think are very urgent and most important.

CONCILIATION AND MEDIATION IN LABOR DISPUTES.

Mr. WATSON. Very well. I wish merely to add, then, a word in connection with the duties which are imposed upon the Secretary in connection with section 8 of the organic act, which provides for conciliation and mediation in labor disputes. The Secretary's construction of that section was that he was authorized to appoint officers for the conduct of that work. With that opinion the House committee apparently took issue. As a consequence we have been limited to $5,000, which is made available solely for the payment of expenses. I have also indicated in this letter that we have so far participated in some 11 cases in carrying out these duties.

Senator OVERMAN. Is there not any conflict between that and the Mediation Commission?

Mr. WATSON. No, sir.

Senator OVERMAN. You call yours the conciliation board?

Mr. WATSON. Mediation and conciliation. Their functions, as I understand, are confined to railroad disputes. Ours are industrial in the broadest sense of the word. Our duties embrace all kinds of industrial and trade disputes. The work is to be nation-wide in scope, and is to be conducted from the Atlantic to the Pacific.

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As I say, we have been besieged with requests for mediation ever since we have been organized, and we have been forced to deny several of these requests, so far, because of lack of funds; $5,000 will not be sufficient to enable us to perform those functions during the balance of the fiscal year. We have also been denied the right to appoint men under this section, which it was the desire of the Secretary to do, and which he felt it was absolutely necessary to do if we are to get men who are qualified to carry out this work to a successful consummation.

On the other points I do not know that there is anything I can state in addition to what is set forth in the letter which we have addressed to the committee. Our chief purpose in appearing here was, if possible, to shed any further light we could on those statements.

Senator OVERMAN. We want to hear you on anything you want especially to enforce upon us.

CONTINGENT FUND, DEPARTMENT OF LABOR.

Mr. WATSON. The matter of most pressing importance is that of rent and the requisites of the office. The Secretary's immediate office at the present time is equipped with one desk and about four chairs. That is all he owns in the office. When the Department of Commerce moves out, which they are doing now (I suppose they will be all out next week), there will not be even a carpet on the floor for the Secretary's office. We have no bookcases for him, and we shall soon reach the point where we will not be able to buy even pencils and paper; we will not be able to defray the expenses of telegraphing, telephones, or, as I have said before, heat and light.

Senator OVERMAN. How much do you have now for contingent expenses?

Mr. WATSON. We have $1,220.

Senator OVERMAN. That was in the last appropriation bill?

Mr. WATSON. No; to that, $5,000 has been added by the House. Of course, that is not available at the present time, however.

Senator OVERMAN. I understand there was $37,900 transferred from the original appropriation for the Department of Commerce and Labor.

Mr. WATSON. That has to be apportioned among the various bureaus. Each bureau gets a certain amount of the contingent fund.

Senator OVERMAN. How much does this bureau get?

Mr. WATSON. The office of the Secretary, which covers the Secretary, assistant secretary, chief clerk, disbursing clerk, Appointment Division, and the Divisions of Publications and Supplies, got in all $7,300. We have prepared a statement showing just how we have expended that money; and, as I stated before, we have $1,220 left to-day.

Senator OVERMAN. You got $7,300 out of $37,900?

Mr. WATSON. Yes, sir. For instance, $13,500 of that sum is available only for the expenses of the outside immigration service. We can not touch that. The balance has been apportioned to the various bureaus. We subsequently deducted a proportionate amount from that, in order to further increase the Secretary's allotment.

Senator OVERMAN. All the bureaus that are taken away from the Department of Commerce and Labor, and included in your depart-

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ment, have been provided for in the legislative appropriation bill, have they not?

Mr. WATSON. The bureaus have been; yes, sir. What we are asking for now is simply a contingent fund for the office of the Secretary itself, as distinguished from those services.

Senator PERKINS. How much do you estimate is absolutely necessary for that purpose?

Mr. WATSON. We request that the $5,000 granted by the House be increased to $22,779.

Senator PERKINS. That would carry you through to the end of the fiscal year?

Senator OVERMAN. For contingent expenses?

Mr. WATSON. Yes, sir.

Senator OVERMAN. And that is to be used for buying furniture?

Mr. WATSON. To buy furniture, to pay for heat, light, rent, and a thousand and one other miscellaneous items which are necessary for the conduct of the office. I have a detailed statement setting forth just how we expect to expend the money.

Senator OVERMAN. That is in the letter?

Mr. WATSON. Yes, sir.

Senator OVERMAN. I will ask the stenographer to put the letter in the record.

(The matter referred to is as follows:)

DEPARTMENT OF LABOR,
OFFICE OF THE SECRETARY,
Washington, September 12, 1913.

Hon. THOMAS S. MARTIN,
Chairman Senate Committee on Appropriations, Washington, D. C.

SIR: I desire to invite your attention to pages 34 to 36 of the urgent deficiency bill, H. R. 7898, and the appropriation therein authorized for the Department of Labor during the balance of the present fiscal year, in the hope that what follows hereinafter will be sufficient to carry conviction to your mind, as well as that of the other members of the Senate Committee on Appropriations, that if the laws with the enforcement of which this branch of the Government is charged are to be given force and effect further provision must be made as follows:

The Secretary's Office of the department is composed, in addition to that of the head of the department, of the offices of the Assistant Secretary, Chief Clerk, Disbursing Clerk, Appointment Division, and Division of Publications and Supplies. The only force which has thus far been provided to man these various offices is some 16 employees which were transferred by the Department of Commerce out of a total of 156 previously assigned to the corresponding duties in the former Department of Commerce and Labor. As a result it has been a physical impossibility to transact in a satisfactory manner the business of the executive offices of this department. The office of the chief clerk is at present without any clerical assistants whatsoever. As a temporary expedient the department has been put to the necessity of detailing employees from the various bureaus under its jurisdiction, greatly to the detriment of these branches of the service. This is manifestly a condition which calls for speedy relief. If the business is to be carried on in even a reasonably efficient manner I deem it imperative that the following positions, in addition to those which are provided in the bill passed by the House, be authorized:

Office of the chief clerk:	
1 clerk, at $1,800	$1,800
1 clerk, at $1,600	1,600
1 clerk, at $1,400	1,400
1 clerk, at $1,200	1,200
1 assistant messenger, at $720	720
Appointment Division:	
1 clerk, at $1,800	1,800
Division of Publications and Supplies:	
1 clerk, at $1,800	1,800
2 clerks, at $1,600	3,200

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Division of Publications and Supplies—Continued.

1 clerk, at $1,400	$1,400
2 clerks, at $900	1,800
2 assistant messengers, at $720	1,440
Office of disbursing clerk:	
1 clerk, at $1,800	1,800
1 clerk, at $1,600	1,600
1 clerk, at $1,400	1,400
Office of the Secretary and Assistant Secretary:	
1 messenger, at $1,000, in lieu of 1 messenger, at $840	160
	23,120

NOTE.—This messenger is to be assigned to the office of the Secretary. The salary specified is that paid to all messengers assigned to Cabinet officers, with possibly one exception, and it is considered but just that no discrimination should be made in this instance.

Mechanical force:	
1 engineer, at $1,200	1,200
2 elevator conductors, at $720	1,440
3 skilled laborers, at $840	2,520
2 firemen, at $660	1,320
6 laborers, at $360	3,960
1 carpenter, at $900	900
1 chief watchman, at $900	900
2 watchmen, at $720	1,440
4 charwomen, at $240	960
Total	37,760

NOTE.—The personnel of the department as at present constituted comprises neither a mechanical force nor employees for the upkeep, repair, and cleaning of its quarters. It is, of course, very evident that some provision of this sort must be made. I therefore feel that I can not too strongly urge upon you the necessity for providing $37,760 in addition to the $8,416.70 authorized at line 12 of page 34, in order to complete the personnel of this office.

The second item to which I wish to draw your attention is that of $5,000 at line 22 of page 34, for contingent expenses. The Department of Commerce transferred to the Department of Labor for contingent expenses $13,500, which is only available for supplies furnished to the Immigration Service outside of Washington, and $24,400 for expenses in the city of Washington. This latter amount was apportioned as follows:

Bureau of Immigration	$1,800
Bureau of Labor Statistics	3,400
Bureau of Naturalization	8,500
Children's Bureau	3,400
Office of the Secretary	7,300

It will be observed that $7,300 was made available for the executive offices of the department as distinguished from its various bureaus. This was accomplished, however, only by the exercise of the most rigid economy and deductions from the various bureaus composing the department which they could ill afford to stand. This $7,300 has been expended as follows:

Statement showing supplies and equipments purchased.

	Furniture.	Traveling expenses.	Typewriters and adding machines.	Duplicating devices.	Office equipment.	Stationery, etc.	Total.
Miscellaneous supplies, desk accessories, etc							$3,000.00
Secretary			$77.50		$256.25	$19.61	353.36
Assistant Secretary	$79.44	$6.00	77.50		22.50		185.44
Chief clerk	110.10		174.50			7.76	292.36
Disbursing clerk	194.55		166.50			32.24	393.29
Solicitor	28.50					5.80	34.30
Publications and Supplies	243.09		511.37	$876.00		189.94	1,820.40
Total							6,079.15

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Thus leaving an unobligated balance of $1,220.85. To this the House bill proposed to add $5,000, making available $6,220.85 for the following items throughout the balance of the present fiscal year.

Furniture for executive offices and clerks allowed	$2,750
Miscellaneous supplies	10,650
Horses and vehicles	6,500
Maintenance and upkeep of buildings	5,000
Traveling expenses for office of the Secretary	1,100
Field investigations, Children's Bureau	3,000
Total	29,000

It is absolutely essential that the difference between this amount and that proposed, to wit, $22,779.15, be allowed if the executive offices of the department are to be equipped with furniture, machines, and such other accessories as are indispensable to the transaction of ordinary Government business.

The plan proposed in the House bill for housing the Department of Labor is impossible. It contemplates that the four bureaus constituting the Department of Labor shall occupy the quarters originally planned for them as part of the Department of Commerce and Labor (i. e., in the new Commerce Building) and that the offices of the Secretary of Labor shall be located in another building, where anything like immediate supervision would be impracticable. The Secretary or the Acting Secretary must personally pass upon 75 per cent of the matters arising under the immigration laws. This means that he should be in the same building with the Bureau of Immigration. Hardly a day passes that he is not in consultation with Senators, Congressmen, or the general public in cases involving the right of aliens to enter or remain in the United States. This is a subject dealing with human beings, rather than commodities. In nearly every instance prompt action is imperative, and as a consequence the Secretary must be in such close proximity to the Bureau of Immigration and all its records that any of the latter can be produced in a moment's notice. This will be possible only when he is in the same building with the Bureau of Immigration, as he is now and always has been. To meet this situation the department requests $9,000 for rent in lieu of the $5,000 granted, which will enable it to provide offices for the Secretary, Bureau of Immigration, and Children's Bureau in the Willard Building, and move the Bureau of Naturalization and Labor Statistics to the new building which will be occupied by the Department of Commerce.

I therefore respectfully recommend that the committee strike out from line 24 of page 34, "for the office of Secretary of Labor, $5,000," and insert in lieu thereof, "For the Department of Labor, $9,000."

The refusal to allow more than $5,000 for expenses of commissioners of conciliation is so far insufficient to carry out the terms of section 8 of the act of March 4, 1913, creating the Department of Labor, that it virtually amounts to a repeal of one of the department's most important functions, as it fails to provide the means for doing that which the general law says shall be done. The original amount requested was $50,000, and this sum should by all means be provided if the law is to be given effect. Since the department came into being it has participated in some 11 cases arising under this provision of law. Success has attended its efforts in practically every instance. There is no more important question before the country to-day than this which has to do with the promotion of a better understanding between employer and employee. Present indications are that the department will be constantly engaged in the performance of the duties which this section of the law imposes upon it. Occasions for the utilization of its good offices are of course more or less spasmodic, but in the brief period of its existence these instances have occurred with such frequency as to indicate that the department should have money and men available for continual service under this section. The House bill limits the expenditure of this money to the payment of expenses of commissioners of conciliation. Adhering to the opinion that it should be available for payment of salaries and expenses of these officers, I trust that the committee will strike out lines 1 to 5, on page 35, and insert in lieu thereof "to pay the salaries and expenses of commissioners of conciliation in labor disputes whenever appointed in pursuance to section 8 of the act creating the Department of Labor, $50,000, or so much thereof as may be necessary."

The appropriation of $14,000 for a new water main for the Ellis Island immigration station, while it is inadequate to do all the work originally proposed, will be sufficient to do that part of it that is urgently needed, leaving the remainder for future disposition.

The Philadelphia immigration station is completed except for the erection of an inspection house to be placed upon a pier which has recently been finished. This

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building will cost $50,000, and of this sum there is but $35,000 available. Unless, or until, the balance is appropriated construction work can not be commenced and the landing conditions at this growing port will continue in the anomalous state which originally led to starting the station project. This sum should be appropriated now, so that the building may be ready for occupancy by the spring of 1914.

The House bill carries no appropriation of funds for additional investigative work to be undertaken by the Bureau of Labor statistics. As a consequence, it will be impossible to undertake much work along this line of endeavor which really should be pursued.

The House bill omits entirely the appropriation of $25,000 which was requested for printing and binding. The Department of Commerce transferred to the Department of Labor the sum of $84,000 for printing and binding during the fiscal year 1914. Of the amount transferred, $83,125 was for printing and binding of bureaus and services taken over by the new department. This leaves but $875 for the offices of the Secretary, which is utterly inadequate to provide even absolute necessities. For instance, the publication of the Secretary's annual report alone (a duty imposed upon him by law) would exhaust over one-half this amount. The balance will not begin to meet the needs of this office. It should be increased to $10,000. There should also be provided $15,000 additional for printing and binding for the Bureau of Labor Statistics. The work which this branch of the department is doing along these lines is of inestimable value, and its curtailment, which is inevitable unless additional funds are provided, will be a serious loss.

I feel that I can not overestimate the importance of each and every one of the above-enumerated items, and it is my sincere hope that the committee, after a careful consideration of the entire matter, will reach the same conclusion that I have, i. e., that they are absolutely essential to the carrying forward of the work which falls to the lot of this department of the Government.

Respectfully,

W. B. WILSON,
Secretary.

STATEMENT OF SAMUEL J. GOMPERS, CHIEF OF THE DIVISION OF PUBLICATIONS AND SUPPLIES, DEPARTMENT OF LABOR.

PRINTING AND BINDING, DEPARTMENT OF LABOR.

Mr. GOMPERS. Congressman Lewis, in his talk, spoke of the $15,000 asked for by the Bureau of Labor Statistics. That accounted for only $15,000 of the $25,000 asked for. We, in our estimates, ask for $10,000 for the printing for the office of the Secretary.

The Department of Commerce, when it separated from the Department of Labor, turned over $84,000 to us. That included the allotments for printing and binding for the four bureaus and left only $875 for the printing for the office of the Secretary. That would hardly more than pay for the printing of his annual report, not counting the printing of the different annual reports of the chiefs of the divisions to him and the department circulars and decisions. In fact, I have here a list that I prepared, which possibly could become part of the record, showing how we could use for the next year $13,605.

Senator OVERMAN. How could you use it? I should like to hear it.

Mr. GOMPERS. When I was placed in charge of the publications of the department it was the beginning of May. As you can see, that left not quite two months of the fiscal year. I immediately got busy and ordered all the printing that I thought I needed; but the Government Printing Office could not complete the work by the end of the fiscal year. Consequently there was $4,375 worth of printing that had been started that went over into this fiscal year. They gave us a bill for the work which they had completed, and the balance went back into the Treasury. That $4,375 goes back into the

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Treasury and we must pay it out of the appropriation for this fiscal year. Therefore, in making my estimates—of course, being a new department, and not knowing exactly what printing we are going to have, we are going on the basis of the printing that had been done for the Secretary's office of the Department of Commerce and Labor—I figured out that with the $4,375 that was left over we would need $13,605. We have asked for $10,000, on the idea that possibly there will be some few thousand dollars that will go over into the next year from this year, just the same as this $4,375 has come over into this year.

That is always the trouble when you order printing at the Government Printing Office. They only charge you for the amount of work done up to the night of June 30 of the current fiscal year. All unused money goes back into the Treasury and must be paid out in the next fiscal year. It is not anticipating anything; it is simply because in order to clear up their books they must close them at the end of the fiscal year. It rather works a hardship on us sometimes, because, as I say, it forces money back into the Treasury that we find difficulty in getting Congress to reappropriate.

That part of it, particularly, was in my line. I should like to hand in this statement as part of the record, with your permission.

Senator OVERMAN. Very well. You have not told me how you propose to spend it, though.

Mr. GOMPERS. It is itemized there; you can see it, Mr. Chairman.

(The matter referred to is as follows:)

Printing and binding, 1914.

Annual report of the Secretary (Commerce)		$550
Annual report, Chief Division of Publications and Supplies (Commerce)		150
Annual report, Chief Appointment Division (Commerce)		105
Consolidated reports of the department (Commerce)		1,400
Department circulars (estimated)		100
Department decisions (estimated)		75
Lists of publications of the department (semiannual)		50
Reports directed to be made pursuant to sections 8, 9, and 10 of the act of Mar. 4, 1913, concerning conciliation and arbitration in labor disputes, special investigations, and coordination of the activities, duties, and powers of the Office of the Secretary of Labor, with the activities, duties, and powers of present bureaus, commissions, and departments so far as they relate to labor and its conditions (estimated)		3,000
Ledgers, blank books and forms, letterheads, envelopes, memorandum sheets, stenographers' notebooks, index cards, guide cards, folders, etc., for distribution to the several bureaus and offices of the department		1,000
Miscellaneous supplies and printing and binding for the Office of the—		
Secretary	$500	
Assistant Secretary	300	
Solicitor	200	
Chief clerk	400	
Disbursing office	400	
Division of Publications and Supplies	700	
Appointment Division	300	
		2,800
In view of the fact that the Division of Publications and Supplies of the department did not get on a working basis until the latter part of May, and that only one month remained of the fiscal year 1913, a great amount of the printing ordered from the Public Printer was not finished at the end of the fiscal year. As a consequence, $4,375 worth of work was uncompleted, and that amount was, under the law, turned back to the Treasury, and, since this work is ordered, it will necessarily have to be paid for out of the appropriation for printing and binding for the fiscal year 1914		4,375
Total		13,605

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CONVEYANCE FOR MAIL AND OTHER PACKAGES.

Mr. GOMPERS. Another question which comes up in my line is the matter of a conveyance for the delivery of mail and packages from the Division of Publications and Supplies to the bureaus, to the Government Printing Office, to the freight depots, and to the post office. The Department of Commerce has been supplying us that conveyance, but they are going to move some time this week, and from that time on we shall have no means of getting a matter of 25,000 to 30,000 pounds a month delivered. It will be a difficult matter for us to get it delivered anywhere, particularly as we have not any contingent fund to speak of to pay for delivery.

Senator PERKINS. Will not the Government Printing Office deliver it?

Mr. GOMPERS. They might come and get the matter for them, but the matter going to them is a very small part of that which we send out. We supply some 3,000 clerks of courts with papers. All the important immigration stations and substations are supplied with blanks and supplies from our office that must be delivered to the freight stations and to the post office. The post office will not call for these large packages, sometimes big cases, and it is absolutely necessary that we shall have some means of conveyance. That is stated in the letter, but I wish to explain why we ask for this. We ship from my division from 25,000 to 30,000 pounds a month in packages of different size, ranging from a quarter of a pound to 400 pounds. We must have some means of conveyance to carry those away.

I believe that is all that I have to say. The matter of printing, and a conveyance for our supplies, is all my part of it.

FURTHER STATEMENT OF ROBERT WATSON, CHIEF CLERK, DEPARTMENT OF LABOR.

PHILADELPHIA IMMIGRATION STATION.

Mr. WATSON. Mr. Chairman, I desire to add just a few remarks in connection with the item of $15,000 for the Philadelphia immigration station. We have recently completed a new station at that port, and have constructed a pier on which the immigrants are to be landed, instead of at the various steamship piers, which have been the landing places for several years past. The conditions at those piers are admittedly very bad.

Senator PERKINS. Is that in New York or Phialdelphia?

Mr. WATSON. Philadelphia—Gloucester City. The environments there are conducive to fire, the spread of smallpox and all other forms of pestilence. So the Government, recognizing this, has provided this other station, other administration buildings, and, as I said before, the new pier. On that pier we propose to erect an inspection building. There is available for that building at the present time but $40,000. We figure, in accordance with the estimate which the Treasury Department has submitted to us, that it will require at least $50,000 to finish the building, and we figure that it will require, in addition to that, $5,000 for furnishings.

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Senator OVERMAN. Is the New York immigration station under you, too?

Mr. WATSON. Yes, sir: that is on Ellis Island.

Senator OVERMAN. But not quarantine?

Mr. WATSON. No, sir: quarantine is under the Traesury Department. That is farther down the bay. The point in connection with this matter, though, is that until the additional $15,000 is made available we can not proceed with the construction of this inspection house on the pier, and as a consequence we will not be able to utilize the pier, but will have to continue examining aliens at the steamship piers, so that to a great extent the plans which were in mind in connection with the erection of the station will be frustrated. That is all I have to say.

Senator OVERMAN. We are much obliged to you, gentlemen.

Mr. WATSON. Thank you, sir.

STATEMENT OF EDGAR B. MERITT, CHIEF LAW CLERK, OFFICE OF INDIAN AFFAIRS.

Mr. MERITT. Mr. Chairman and gentlemen of the committee, the Commissioner of Indian Affairs, Hon. Cato Sells, has an important engagement with Secretary Daniels this afternoon, and is not able to appear before the committee. He asked Mr. Dimick and myself to appear for him.

The Indian Office is asking for two items of appropriation in the urgent deficiency bill.

Senator OVERMAN. Have you been before the committee of the House?

Mr. MERITT. Yes, sir.

Senator OVERMAN. And you made your statement there?

Mr. MERITT. Assistant Commissioner Abbott appeared before the House committee and made a statement before that committee, but the items that were asked for were not included in the House bill. I will present the item for the heirship work, and Mr. Dimick, chief of the Finance Division, will present the item to carry out section 26 of the Indian appropriation act of June 30, 1913.

HEIRSHIPS OF INDIANS.

We are asking for $10,000 of the $50,000 appropriated in the Indian appropriation act of June 30, 1913, for heirship work, in order that we may increase the clerical force of the Indian Office to continue this work. Under the act of June 25, 1910 (36 Stat. L., 855), the Secretary of the Interior is charged with the duty of determining the heirs of deceased Indian allottees. We have Indian reservations in about 25 States, with about 135 agencies, and at practically all of these agencies, except the nonreservation schools, we have allotted Indians. These Indians are dying; they leave allotted lands, and it was necessary for the Secretary of the Interior and the Commissioner of Indian Affairs to determine the heirs of the deceased allottees.

It is estimated that we now have between 30,000 and 40,000 heirship cases undetermined pending in the field. This represents

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Indian lands, inherited lands, valued at about $60,000,000; so you can see that this is very important work.

Senator OVERMAN. Is this paid out of the Indian fund?

Mr. MERITT. No, sir. We are asking for $10,000 of the money already appropriated to be used for this work. We are not asking for a specific appropriation, but simply for authority to use for clerk hire in the Indian Office $10,000 of the $50,000 appropriated in the last Indian appropriation act. Under the $50,000 appropriated we can do the field work; but we can not use any of that appropriation here, because of a provision of existing law that we can not increase the clerical force of the bureaus in Washington without specific authority of Congress.

Senator OVERMAN. Do you know why the House turned that down?

Mr. MERITT. As the Indian bill passed the Senate, there was a proviso to the $50,000 appropriation for heirship work permitting us to use $10,000 of the appropriation for clerk hire in the Indian Office. That item went to conference, and, as I understand, certain members of the House Appropriations Committee objected to the Indian Committee taking jurisdiction of this matter, because it provided for clerks in the department here at Washington; and the proviso we are now asking for was omitted from the Indian bill with the understanding that it would be taken care of in this bill.

Senator OVERMAN. The trouble about that is that that makes it a lump sum again. If you want clerks, the positions ought to be named, with the salaries attached to them, so that we can understand exactly what we are doing, instead of allowing somebody who may be running the bureau to transfer a man from one place and increase his salary. When we give a lump sum of $10,000, while I do not say that will be done, it will be possible for whoever may be in charge to pay a man $2,000 or $3,000 salary. If you would name the positions, with the salaries that you wish to pay, it would be better than to have a lump-sum appropriation. This committee has been opposed to lump-sum appropriations.

Mr. MERITT. We shall be very glad, Mr. Chairman, to amend our proposed item so that that may be provided for. We are asking for $10,000, and if you will give us eight clerks at $1,200 apiece, we can care for the work that is coming is now from the field.

Senator OVERMAN. How many clerks have you doing that work now in the office?

Mr. MERITT. We have six.

Senator OVERMAN. Only six?

Mr. MERITT. Six; and we have between 1,000 and 1,500 cases on hand which we are not able to handle because of the lack of clerical force. The work of the Indian Office is very materially in arrears because of lack of sufficient clerical force. The last legislative bill did not provide for all the clerks we then had in the office, and it was necessary to reduce the clerical force on July 1, notwithstanding the fact that we asked last year for an increased force; so you can see the handicap that the Indian Office is now under with a decrease.

Senator OVERMAN. So you do not need $50,000 for field work?

Mr. MERITT. We very seriously need the $50,000 for field work, to clear up between 30,000 and 40,000 cases that are now out in the field.

Senator OVERMAN. But you can take off $10,000 of it?

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Mr. MERITT. In order to provide for this urgent necessity of the Indian Office, we are willing to take off $10,000 of the appropriation provided.

Senator OVERMAN. How long will it take these clerks to do the work?

Mr. MERITT. The heirship work will continue for a number of years. It will take a number of years to complete it, but we can do the most important part of it within the next three or four years.

Senator OVERMAN. It will take three or four years to do it?

Mr. MERITT. Yes, sir.

Senator OVERMAN. Have you space enough in your building to do it?

Mr. MERITT. The Pension Office has allowed us additional room within the last few days, and I think if we can get the clerks we can provide room for them in the office.

Senator OVERMAN. So it is not asking for any additional appropriation, but just for a part of your appropriation for additional clerks?

Mr. MERITT. That is all.

Senator OVERMAN. That means, hereafter, an additional appropriation of about $10,000 for clerks?

Mr. MERITT. For additional clerks in the office to care for the work as it comes in from the field.

Senator OVERMAN. That would be adding to the usual appropriation $10,000 a year, then?

Mr. MERITT. About $10,000 a year would be added to our regular appropriation for clerk hire in the Indian Office. The lack of appropriation to clean up this heirship work is very harmful to the Indians. We are not able to sell this inherited land because of the fact that the heirs have not been determined. As a result, the living Indians are without funds to improve their allotments or procure farming implements so that they can go to work and make beneficial use of the lands the Government has allotted to them. It would be of the greatest assistance to the Indian Office, and of very material help to the Indians of the country, if we could procure sufficient appropriation to clean up this Indian heirship work.

STATEMENT OF HAMILTON DIMICK, CHIEF OF THE DIVISION OF FINANCE, OFFICE OF INDIAN AFFAIRS.

NEW BOOKKEEPING SYSTEM FOR INDIAN OFFICE.

Mr. DIMICK. Mr. Chairman and gentlemen of the committee, in the unavoidable absence of the commissioner I have been asked to appear before you in behalf of the appropriation which is asked for to carry into effect the provisions of section 26 of the Indian appropriation act of June 30, 1913.

This section provides that on or before the 1st day of July, 1914, the Secretary of the Interior shall cause a system of bookkeeping to be installed in the Bureau of Indian Affairs which will afford a ready analysis of expenditures by appropriations and allotments and by units of service, showing for each class of work or activity carried on the expenditures for the operation of the service, for repair and pres-

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ervation of property, for new and additional property, salaries and wages of employees, and for other expenditures, etc.

This matter was originally inserted in the Indian bill by the Senate committee by an amendment of a little different form; and as passed by the Senate, the amendment carried an appropriation of $12,000 for putting it into effect. In the conference the form of the item was changed and the appropriation was stricken out. I understand, though I have no definite information on the subject, that the House committee raised no particular objection to the appropriation, but did not think it should go in the Indian bill. The effect of leaving it out entirely puts the Indian Office in the position of being required to make a complete revision of its bookkeeping system without any outside aid.

From my point of view, and I am in charge of that particular work, this looks to me like a physical impossibility. We have there, as Mr. Meritt has already said, not enough clerks to do the work as it should be done. There is a tremendous volume of work coming before the Indian Office all the time and it is rapidly increasing. We have for our bookkeeping work 13 clerks, which are all we have been able to get, and each clerk has just as much as he can possibly do. To install the new system of bookkeeping, with all of the details required by this legislation, would take all of their time without their having anything else to do for, I should say, several months—that is, those who are available for that particular work. That would mean that the current work of the office would have to go undone, and that would lead to chaos.

I should like to read part of a memorandum I have here, to give a general idea of the amount of work.

Senator OVERMAN. Suppose you file it with the stenographer?

Mr. DIMICK. It is not in such form that it can be included in its entirety. It was not prepared for this purpose.

The total balance of all funds of the Indian Service in the Treasury June 30, 1913, including unexpended balances of appropriations and trust and traveling funds, amounted to over $51,000,000. Of this amount, about $36,000,000 represents trust funds belonging to the Indians, bearing interest at 3, 4, and 5 per cent per annum, which yields an income of approximately $1,700,000 annually. The annual appropriations by Congress for the last 12 years have averaged about $10,000,000. The disbursements each year for the last four years, including payments to Indians, have been from fifteen to twenty million dollars.

The work to be done in connection with these funds includes general ledger accounts of receipts and disbursements under over 1,000 different appropriation funds.

Senator OVERMAN. How many clerks have you—13?

Mr. DIMICK. We have 13 in that section, sir. They are not all doing bookkeeping work, but some of them are doing work necessary in that connection, more in the nature of routine work. As I say, our work includes receipts and disbursements under over 1,000 different appropriations and funds, requisitions for advances of funds to disbursing officers, preparation of expenditure authorizations, and preparation of financial statements, statistics, etc.

There is already in the Bureau of Indian Affairs a system of bookkeeping which embraces apportionments from and liabilities against

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appropriations, and affords an analysis of expenditures from each appropriation by agencies, schools, and projects. The system required by the act of June 30, 1913, calls for information along such different lines and involves so much more detail that the present forms and methods of procedure will have to be discarded and an entirely new system worked out and put into operation. This, of necessity, must be done without any break in the continuity of the office records.

For the reasons I have enumerated, it seems imperative that provision should be made for employing expert accountants from the outside to install the required new system. Either this should be done or the section, it seems to me, ought to be repealed, because the requirement is practically impossible of performance without an appropriation.

Senator PERKINS. As a matter of fact, however, there is no deficiency at this time?

Mr. DIMICK. No, sir; there is no deficiency. Nothing has been done yet toward carrying out the provisions of this section.

Senator PERKINS. So I see by the note here. That provision ought properly to be made under the sundry civil appropriation bill. This is an urgent deficiency bill. You have not been able to do anything with it?

Mr. DIMICK. No, sir; we have not done anything at all, because we hardly see how we can put in a new system with the present force without very serious complications, by reason of the fact that the current work would have to be let go.

Senator PERKINS. You are asking for $12,000?

Mr. DIMICK. $12,000; yes, sir.

Senator PERKINS. Mr. Chairman, there is no deficiency under this item.

Senator OVERMAN. I understand. That involves the question, Mr. Dimick, of putting a matter on here that is not really a deficiency. This is a deficiency bill that we are considering.

Senator PERKINS. Of course they would like to have the money in order to carry out the act.

Senator OVERMAN. You will have to wait until the next legislative appropriation bill and then make your appeal.

Mr. DIMICK. If we do that, Mr. Chairman, we may not be able to comply with the law and get this system in operation on the 1st of July.

Senator OVERMAN. Do the best you can. If you can not do it, it will not be your fault. If Congress has imposed on you something that you can not do, it will not be your fault. I do not see what authority we have to put an appropriation of that sort in here.

Senator PERKINS. Have you authority under the law to use the money you now have at your disposal to carry out this provision, Mr. Meritt?

Mr. MERITT. We have no money available under any existing appropriation by Congress to carry out section 26 of the Indian appropriation act.

Senator OVERMAN. This $50,000 is all available for field work?

Mr. DIMICK. Yes, sir.

Senator OVERMAN. And you want $10,000 of the part that is already appropriated made available for clerks in the office?

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Mr. MERITT. Yes; for this heirship work. We are not asking for a specific appropriation. We are simply asking authority to use for work here in the Indian Office $10,000 of the $50,000 already appropriated.

Senator OVERMAN. I think possibly that would be in order.

Mr. MERITT. In compliance with your suggestion, Senator, an item has been drafted to provide a specific appropriation for eight clerks.

Senator OVERMAN. Yes; that is all right. Just hand it to the stenographer.

Mr. MERITT. We should be glad if that might appear in the hearings; also the letter of the commissioner, in which he expresses his approval of both these items.

(The matter referred to is as follows:)

PROPOSED AMENDMENT.

For the employment of eight clerks in the Office of Indian Affairs at $1,200 per annum each for work in connection with determining heirs of deceased Indian allottees, $9,600, or so much thereof as may be required to be paid from the $50,000 appropriated in the Indian appropriation act of June thirtieth, nineteen hundred and thirteen, for such work in the Indian field service.

DEPARTMENT OF THE INTERIOR,
OFFICE COMMISSIONER OF INDIAN AFFAIRS,
Washington, September 23, 1913.

MY DEAR SENATOR: I learn from Senator Martin that you are apt to dispose of the deficiency appropriation bill to-morrow, and that it is desirable that the matters to be presented from the Bureau of Indian Affairs shall be taken up this afternoon.

Owing to a previous important engagement for a conference with Secretary Daniels this afternoon, I find it impossible for me to personally appear before your committee and accordingly I have requested Mr. Meritt, chief law clerk, and Mr. Dimick, the Chief of the Finance Division, to represent me and present the two matters on which we desire to be heard.

I am interested that these matters shall be fully presented to you and that they shall receive favorable consideration.

Very truly, yours,

CATO SELLS,
Commissioner.

Hon. L. S. OVERMAN,
Chairman Subcommittee on Appropriations, United States Senate.

Senator OVERMAN. We will now hear Senator Pomerene, who has a matter he desires to present to the committee.

Senator POMERENE. Mr. Chairman, we have here the adjutant general of the State of Ohio, representing the governor and the Ohio National Guard. They have a claim which was presented to the House committee. I will introduce Adjt. Gen. Wood, and let him present the matter to you.

STATEMENT OF ADJT. GEN. GEORGE H. WOOD, OF THE OHIO NATIONAL GUARD.

REPLACEMENT OF SUPPLIES FOR OHIO NATIONAL GUARD.

Adjt. Gen. WOOD. Mr. Chairman and members of the Appropriations Committee, the little matter that I have to lay before the committee concerns losses sustained in the recent floods in the State of Ohio.

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Senator OVERMAN. Did you appear before the House committee?

Adjt. Gen. WOOD. No, sir; I did not appear before the House committee. They did not give me a chance; but Assistant Secretary of War Breckenridge did appear before them a couple of times, and I personally had a couple of conversations with Mr. Fitzgerald, the chairman of the Committee on Appropriations, and also several talks with members of the committee.

To be very brief, Mr. Senator, the situation is this: During our recent floods in the State of Ohio the Ohio National Guard were on duty for a period running up as high as six or seven weeks. It was typically a mud campaign, which was very destructive of clothing, shoes, leggings, overcoats, and all forms of equipment. In addition to that seven or eight of our armories in different parts of the State were caught in the flood and were under all the way up to 13 feet of water—that is, armories on ground floors. The result of that was a great loss and also a great expenditure of supplies belonging to the Ohio National Guard which we had taken from the Federal Government under the provisions of the Dick bill.

The matter was first taken up with the Bureau of Militia Affairs. We stated our losses, and they directed us to have a board of survey pass on the question of our losses and then submit the report of the board of survey to them with the evidence in the case, which we did. I have with me copies of the reports of the boards of survey which were submitted by the National Guard of Ohio to the Bureau of Militia Affairs and by them to the Quartermaster's Department of the Army. The surveys were passed by the Quartermaster General of the Army, and we were authorized to drop these supplies from the property for which Gov. Cox is accountable to the War Department, but that did not replace the supplies and left our equipment very much depleted.

The matter was then taken up by me with the Assistant Secretary, Mr. Breckenridge. On the 12th day of August he submitted an item to be included in the deficiency appropriation bill which would cover our losses and recommended that it be approved by the Committee on Appropriations.

Senator OVERMAN. Has this matter been before the Committee on Military Affairs?

Adjt. Gen. WOOD. No, sir; it went directly to the Committee on Appropriations. After that I had a couple of conversations with Mr. Fitzgerald and asked that I be heard if he would consider the matter. A short time after that I heard from Mr. White, a member of the Committee on Appropriations from the State of Ohio, who stated to me that the item had not been included in the appropriation bill on the ground that there was no precedent for such an appropriation.

Senator OVERMAN. All appropriations in regard to military affairs go before the Committee on Military Affairs. We have nothing to do with them.

Adjt. Gen. WOOD. I do not know as to that. Of course the matter was taken up with the Committee on Appropriations of the House, and it was referred to the Committee on Appropriations by order of the House of Representatives, and that is the way I got before the Committee on Appropriations.

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Senator OVERMAN. To be sure; you are all right. I am speaking only of the jurisdiction.

Adjt. Gen. WOOD. Yes, sir; but that is the way in which I got before the Committee on Appropriations.

Senator OVERMAN. We are very glad to see you; but that is the question I want to consider, as to whether we have any jurisdiction at all in that matter.

Adjt. Gen. WOOD. The House Committee on Appropriations, Mr. Senator, inclosed in their bill items which practically replaced all subsistence, quartermaster, and medical stores which were expended by the Regular Army during the same period of flood service. You will find them, I think, included in the urgent deficiency bill. They amount to some $600,000. But though they acknowledged the fact that we had lost the stores and expended them and were short the stores, they made a ruling that there was no precedent for an item in an appropriation bill replacing stores expended and lost by the National Guard.

Senator OVERMAN. How much of this $4,000,000 for the National Guard was allotted to Ohio?

Adjt. Gen. WOOD. For the purposes that are covered in this bill, about $82,000 for the year, sir. In other words, it will take our entire appropriation for the year to replace what was lost. You see the money appropriated by Congress for the National Guard is included in the two funds, one of which can be used for this purpose, the other fund being used for other purposes.

Senator OVERMAN. What is the total allotment?

Adjt. Gen. WOOD. Our total allotment is $160,000.

Senator OVERMAN. And $82,000 for this purpose?

Adjt. Gen. WOOD. And $82,000 for this purpose. It just splits it about half and half—half for promotion of rifle practice, and half for the purchase of supplies. So our total appropriation for the year is about $82,000. If we are forced to use that $82,000 for replacing stores which were expended and lost during the flood, we will have practically no appropriation for the year. It will just clean us out.

Senator OVERMAN. What would you need this $82,000 for? How would you expend it?

Adjt. Gen. WOOD. We would need it for our usual wear and tear during the year. You see, things like shoes, clothes, and things of that kind, wear out; a certain amount of them wear out every year, and this is used to replace the stores that wear out.

Senator Pomerene has handed to me the House hearings, and has called my attention to page 655. You will find on that page a list of the specific articles, their value, and a full statement of the reports of the boards of survey. I have here, in front of me, the original reports.

Senator OVERMAN. Very well, sir.

Adjt. Gen. WOOD. That is the position in which we are at present. It simply amounts to our being short in our equipment. The State of Ohio has already been very liberal in the matter. It has made an appropriation.

Senator OVERMAN. What did the Quartermaster's Department furnish you by reason of the flood? They have sent certain articles to replace those which were lost, have they not?

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Adjt. Gen. WOOD. They have not replaced anything yet, sir. We have not yet been able to get through this appropriation. The Quartermaster's Department issued a great deal of property all through the States afflicted by the flood, but they did not issue the articles to the National Guard. They issued them to the American Red Cross Society and to flood sufferers. We did not get any of them.

Senator OVERMAN. You got none of them?

Adjt. Gen. WOOD. No, sir; we got none of them. Our losses still stand.

Senator POMERENE. You are not asking for any reimbursement, either, for the money which was furnished to the sufferers?

Adjt. Gen. WOOD. Oh, no, sir; these were losses of the Ohio National Guard. The War Department has already made application and has been reimbursed in the urgent deficiency bill for what it expended and used in the flood States.

Senator OVERMAN. You get an annual allowance of $160,150.18?

Adjt. Gen. WOOD. Yes, sir; half of that is for the promotion of rifle practice, and half of it is for supplies.

Senator OVERMAN. Is that under the rules and regulations of the department, or is that under your own rule?

Adjt. Gen. WOOD. Oh, no, sir; that is under the two bills.

Senator OVERMAN. I understand that you get one under the Dick bill and the other under section 1661 of the Revised Statutes.

Adjt. Gen. WOOD. Yes, sir. They apportion those funds, and under the rules of the War Department there are certain purposes for which we have got to use those funds, and other purposes for which we are absolutely forbidden to use them.

Senator OVERMAN. You can use $82,000?

Adjt. Gen. WOOD. We can use $82,000. That is our limit, sir. It will put us in a very tough position. The stores have been used up, as proved to the satisfaction of the War Department; we have been authorized to drop them from the report of Gov. Cox; and we are short just that much property, just that much equipment, which we really need to have. The National Guard men need the equipment to put them in the shape in which they were before the flood.

That is practically all I have to say to you on the subject. I have great confidence in the justice of our claim. The question of precedent, of course, is a question which was taken up by the House. We have never had a precedent for a flood of that kind in Ohio before, and I trust there will be no successor to the precedent we had last spring.

Senator OVERMAN. You do not like such precedent as that?

Adjt. Gen. WOOD. No, sir. Mr. Senator, I was under water three times the first two days of the flood. I came near being drowned twice. I was military commander of the Dayton military district for seven weeks, and I think if anybody in the State of Ohio is personally acquainted with the flood, I am. For the first week of the flood I spent four nights on duty without ever lying down; so I am pretty well posted on what the flood was.

Senator POMERENE. I saw the Adjutant General in action when he was down there, and I know what the situation was.

Adjt. Gen. WOOD. During the Civil War there was a very famous mud march, which Gen. Burnside organized in Virginia, which was

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not a great success. I have often heard of mud marches, but this is the first time I have experienced such a thing. It simply meant that our men, for the first two weeks at least, were in water all the time. It played the very deuce with shoes and all kinds of clothing. Only last week I was obliged to issue to a company in Norwood, Ohio, a complete new set of olive-drab uniforms because their old equipment was completely worn out and had been condemned, and they had nothing to wear.

Senator POMERENE. How many of the National Guard did you have in service?

Adjt. Gen. WOOD. The entire National Guard, sir—6,500 men and 500 officers. We had every man, including the Naval Militia. In the city of Dayton, at one time, I had in the garrison there between 2,500 and 3,000 men, composed of two companies of Naval Militia, a company of the Signal Corps, a battery of Artillery dismounted, four full regiments of Infantry, and parts of two more regiments of Infantry. My garrison there was about 2,700 men.

Senator POMERENE. How many did you have at Dayton?

Adjt. Gen. WOOD. Two thousand seven hundred at Dayton.

Senator POMERENE. You did splendid service there.

Adjt. Gen. WOOD. The rest of them were scattered all over the State. But for over two weeks the entire National Guard of Ohio, including our Naval Militia, numbering 6,700 men, were on duty, sir. As I say, it was a mud campaign. I will be frank with you, Mr. Senator, and say that if it had not been for the mud and water our losses would not have been so great. But in the city of Dayton, during that time, to keep my men shod, I bought from State funds 1,500 pairs of shoes and used them up in addition to the shoes with which they came there. It just seemed as if the water ate the leather all to pieces. I bought 1,500 pairs of shoes from State funds and issued them to troops right there in Dayton to men who had come there pretty well shod with Government shoes.

Senator POMERENE. Approximately what was appropriated by the State for this purpose?

Adjt. Gen. WOOD. $360,000, sir, of which I have expended $350,000. That was for pay, subsistence, and transportation.

Senator POMERENE. That is a good record, Senator.

Senator OVERMAN. Yes; fine.

Adjt. Gen. WOOD. The State of Ohio appropriated $360,000 for National Guard purposes, outside of their appropriation for relief. I looked at my books before I left Columbus yesterday and I found that my appropriation was cut down to about $12,000, and all claims are not yet in. But for pay, subsistence, traveling, and similar bills the State of Ohio spent $348,000 for the National Guard incident to the flood of last spring.

Senator OVERMAN. What is your regular appropriation?

Adjt. Gen. WOOD. Our regular appropriation is $286,000, exclusive of the armory appropriation.

Senator OVERMAN. Was this $300,000 a special appropriation?

Adjt. Gen. WOOD. This was an extra appropriation of $360,000.

Senator POMERENE. The legislature was in session right after the flood?

Adjt. Gen. WOOD. The legislature was in session and it appropriated $300,000 straight, and then it diverted $60,000 from the armory

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fund. The legislature cut that amount out of my armory fund and put it to the credit of my flood appropriation, which made my flood appropriation $360,000.

As I say, I have $10,000 of that left, but I have enough claims to eat it up. In fact, the proposition of claims resulting from the flood seems to be interminable. So I can not get my $70,000 from the State of Ohio, because they will probably tell me that $360,000 is all they can afford. They have been very liberal and have treated us very well, but we made a good record during the flood. I do not like to say too much for the men of the National Guard of Ohio, but I do say that in the case of at least three cities of the State they were their salvation in a way which can not be appreciated in figures. In the city of Hamilton, the city of Dayton, and the city of Zanesville they were practically all that was left of civil government.

In the city of Dayton the flood was on Tuesday. I happened to be in Dayton. It is my home, by the way, Mr. Senator, and I happened to be there the day the flood came. We were washed out of existence Tuesday morning and did not get back on to the ground again until late Wednesday night. Thursday morning a small part of the center of the city was out of water, and I was there. We had no communication at that time with the outside world, and something had to be done. Civil government had disappeared. So, on my own volition, without any real authority, I declared martial law over the section out of water and started to regulate it. I closed all saloons that were out of water.

Senator PERKINS. You ought to have been down in West Virginia.

Adj. Gen. WOOD. But everybody was with me. This was a sort of kindly martial law. Later in the day I got in touch with Gov. Cox, and he directed me to declare martial law officially, which I did.

Senator PERKINS. During this great flood were any of the public buildings destroyed—any of the Federal buildings?

Adjt. Gen. WOOD. Parts of some of the public buildings were washed out.

Senator PERKINS. I mean the Federal buildings, the post office, etc.

Adjt. Gen. WOOD. Oh, our post office? The downstairs part of our post office was completely washed out. I do not know how many thousands of letters were washed way. I know several important letters of my own have never been heard from. The mayor of the city of Dayton never appeared until Friday afternoon. The flood was on Tuesday, and the mayor never appeared until Friday.

Senator OVERMAN. He was not a candidate for reelection, was he?

Adjt. Gen. WOOD. Not a very strong candidate. The first thing he did was to come up to me as military commander and ask for a pass; so you can see how completely the civil authorities were subordinated, or subordinated themselves. The same thing applies to the city of Hamilton, where martial law was declared; and the same thing applies to the city of Zanesville. In fact, the work done by the National Guard for the people of Ohio can hardly be overestimated.

Senator OVERMAN. The people of Ohio ought to be very proud of it. I read a great deal about it at the time.

Senator PERKINS. Yes, indeed.

Adjt. Gen. WOOD. We feel that under the circumstances of the case we are not asking a great deal. Of course $74,000 is a good deal of money, but it represents stores that were practically expended in

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action—stores that we could not possibly have saved. We could not save our shoes, we could not save our clothes, and do our duty. We simply let shoes and clothes and equipment wear out in the service, and did our duty as we found it.

Senator OVERMAN. Has this appropriation been recommended by the Secretary of War?

Adjt. Gen. WOOD. Yes, sir; right here, sir. Mr. Garrison was out of town at the time, but Mr. Breckenridge not only recommended it, but appeared three times before the House committee in our behalf.

Senator POMERENE. His testimony in full appears in the report of the House committee.

Senator PERKINS. We had a similar experience in San Francisco, only there it was a great fire instead of a flood.

Senator OVERMAN. Did we appropriate for the National Guard in that case?

Senator PERKINS. No; the State did, though.

Adjt. Gen. WOOD. If it had not been for the long service, which ran up such a large bill for subsistence, pay, and traveling, I suppose we would not ask it, but after having gotten $360,000 in addition to my regular maintenance fund I do not believe I can get anything more, and the National Guard is short this property.

Senator PERKINS. It seems to me a very meritorious claim.

Adjt. Gen. WOOD. The War Department have recommended it, and the papers before the House committee also have the recommendation of Mr. Wilson.

Senator PERKINS. The only question is whether it ought to go on an urgent deficiency bill.

Adjt. Gen. WOOD. We need the property. We are short that much property.

Senator OVERMAN. Suppose you expend the $82,000 that you have and come back before the Committee on Military Affairs at the time of the regular appropriation bill, which will be passed next spring. That would be more in accordance with our rules and regulations. How would that do, General?

Adjt. Gen. WOOD. Well, sir, of course I do not want to advise or even to suggest——

Senator OVERMAN. I understand that, but I want to know if you could expend that money and get along until then. That would be only about six months of the fiscal year.

Senator POMERENE. I will only offer this suggestion in that connection: I was impressed with your suggestion that this is a matter that ordinarily would come under the jurisdiction of the Military Affairs Committee; but in this bill you are providing for deficiencies existing in the War Department and the Navy Department due to advances they made to the flood sufferers.

Senator OVERMAN. That is a deficiency, in that it replaces. This is an appropriation which ordinarily would come in the legislative appropriation bill, under the War Department. This is peculiarly a military matter, really, that should come before the Military Affairs Committee.

Senator POMERENE. But here is an appropriation which has been made for the Ohio National Guard.

Senator OVERMAN. The difference between that and this, Senator, is that that is a deficiency true and proper, in that it was a case

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where the Government had gone under its appropriation to purchase supplies for the whole country while this was diverted to one State. Therefore the other matter becomes a deficiency and must be replaced because it might be needed somewhere else; but this is a particular matter involving one State in which the balance of the country is not interested. While I think the merits of the claim are good, and I will vote for it upon its merits, the only question is whether we can put it in here, and I should like to hear you upon that point.

Senator PERKINS. If the Committee on Military Affairs had made the recommendation and referred it to this committee it would be perfectly proper for us to put it in.

Senator POMERENE. You think it had better come in that way, then—to take it before the Military Affairs Committee first?

Senator PERKINS. Yes; you have plenty of time to do that.

Senator OVERMAN. I think that would be the proper course; and yet, if it would be satisfactory to the General, I would suggest that you use this $82,000, advance it; and then I believe the Military Affairs Committee would include in its next appropriation, in addition to the $4,000,000, $74,000 to replace the money which you are allotted under the $4,000,000 appropriation. There will be no question about getting it through. It is only a question of the time: that is all.

Adjt. Gen. WOOD. Of course there is one proposition involved there, Mr. Senator, that is just a little bit doubtful. I have $82,000 to "run" me, if you will excuse the expression, until the 30th of next June.

Senator OVERMAN. Yes. In the meantime we have an appropriation bill which will be passed probably before the 30th of June, and you have so much merit in your proposition that I have no doubt the committee will give the $82,000 to you. If you spend that $82,000 to replace these shoes, and so on, you will have the $82,000 when the bill passes. It is a kind of credit business; that is all.

Adjt. Gen. WOOD. To be frank with you, I suppose I am rather inclined to be economical, but I should hate like the deuce to mortgage the future to a certain extent.

Senator OVERMAN. You have the Government behind you.

Senator PERKINS. I think you have a great deal of merit in your claim, General.

Senator OVERMAN. The only question with us is the precedent.

Adjt. Gen. WOOD. I see.

Senator OVERMAN. That is the regular course. It is only a matter of credit. We will take it up and consider it, but I am just giving you my views. I do not know what the committee is going to do, but that is a snag you will run against.

Adjt. Gen. WOOD. Yes; I can see that very plainly.

Senator OVERMAN. The other committee have full jurisdiction, and there is no question that they will allow you this claim. Are you on the committee, Senator Perkins?

Senator PERKINS. No.

Senator OVERMAN. I have been on the committee, and they are very liberal in these matters, especially toward the National Guard. I was on the committee at the time this appropriation of $4,000,000 was granted, and I know that the committee is very liberal to the

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guard. The only question is whether we ought to put the item in here or whether it ought to wait and be included in the regular appropriation bill by the Committee on Military Affairs. We do not have jurisdiction of the appropriations for the Army and the Navy; but all other appropriations come up here, except, I believe, those for the Indian Office.

Adjt. Gen. WOOD. Let me ask you a question, Mr. Senator. In a case of this kind the appropriation bill will have to be introduced at the next session of Congress, in December?

Senator OVERMAN. Yes. We hope to get it through before June.

Adjt. Gen. WOOD. Where will that bill originate—in the Committee on Appropriations in the House or the Committee on Military Affairs in the House?

Senator PERKINS. The Committee on Military Affairs. They have jurisdiction in the House over that kind of appropriations.

Adjt. Gen. WOOD. I did not know that. I thought they all had to come from the Committee on Appropriations.

Senator OVERMAN. No; they have divided the work there, as we have in the Senate. All appropriations ought to be considered here. because we find, as we go along, a great many duplications; but the military affairs, the Army and the Navy, have been separated.

Senator PERKINS. I was chairman of the Naval Affairs Committee for several years, and the naval deficiencies were reported back to the Committee on Appropriations.

Senator OVERMAN. Yes; that has been the custom.

Adjt. Gen. WOOD. Of course the reason we came before you was because we were recommended to do so by the War Department.

Senator OVERMAN. We have had a good many similar propositions—of course not just like this, but other propositions. They are usually submitted by new men, who do not understand about this being an urgent deficiency appropriation bill. While this item is a deficiency, and has more weight in it than a great many propositions that have been before us to-day and yesterday, I think if you could wait it would keep us from making a precedent that might come up to plague us sometime.

Adjt. Gen. WOOD. Of course, Senators, I am in your hands.

Senator POMERENE. There will not be another Ohio flood.

Adjt. Gen. WOOD. As I say, I do not want any more precedents of that kind.

Senator OVERMAN. There will not be any trouble about your getting the money, General, I think.

Senator PERKINS. Senator Pomerene can put this matter through the Senate without a dissenting vote.

Senator POMERENE. I am sure I will do the best I can. Gov. Cox called the matter to my attention three or four days ago by telegraph, and I immediately got to work and looked up the records. I was very much impressed with the justice of the claim, and I know what royal service the National Guard and The Adjutant General did out there. They have been very much embarrassed, and will continue to be, for want of funds, because of the extraordinary conditions that existed there. For that reason I felt that if this matter could be put through in the deficiency appropriation bill it would not cost the Government any more, and would be the greatest kind of service to the Ohio National Guard.

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Senator PERKINS. I suggest that you present the matter to the full committee, Mr. Chairman.

Senator OVERMAN. Of course I will. I am not making up my mind about it, but I am just making these suggestions.

Adj. Gen. WOOD. There is one thing more. The only reason I have brought our claim here as I have is because I know that the National Guard of Ohio are a fairly efficient lot; and while I am not one of those who seek trouble, still in this day and generation there are wars and rumors of wars. If the State of Ohio should be called upon to furnish a certain number of troops in case any of the rumors of wars should come true, I should feel very badly to find that we were short in necessary parts of our equipment. I am not an alarmist; I am not trying to preach war; but I should hate very much to have to say to Uncle Sam: "We have the men, but we are short this and we are short that and we are short the other," and then have the same troubles that we had in 1898, when I had the pleasure of serving in an Ohio regiment as an enlisted man, sir, when my coat was a sight to gods and men, and my trousers were about half-way between my knees and my ankles. I do not want to put out the Ohio National Guard in that kind of equipment.

I shall not take any more of your time, but I thank you very much for your courtesy.

Senator OVERMAN. We are very much obliged to you. I will bring up the matter before the subcommittee.

STATEMENT OF SENATOR MORRIS SHEPPARD.

APPRAISERS' STORE, GALVESTON, TEX.

Senator SHEPPARD. Mr. Chairman, I introduced an amendment reappropriating $65,000 that has been heretofore appropriated for an appraisers' store building at Galveston.

Senator OVERMAN. Is it an unexpended balance?

Senator SHEPPARD. No, sir; it is not an unexpended balance. The money was appropriated in a buildings bill some two or three years ago, and before the department reached it a subsequent buildings bill, in making additional appropriations for additions to other buildings, practically repealed that appropriation, and made it only an authorization.

Senator PERKINS. I am surprised that the chairman of the Committee on Public Buildings and Grounds would permit such a thing.

Senator SHEPPARD. It was done by the Appropriations Committee.

Senator OVERMAN. You do not claim that that is a deficiency, do you?

Senator SHEPPARD. It seems to me that it is a deficiency. The Secretary of the Treasury, I think, spoke in behalf of the proposition yesterday.

Senator OVERMAN. You say it is reappropriating an amount of money that the Appropriations Committee unintentionally knocked out?

Senator SHEPPARD. No; the language of the last public buildings bill, I believe, changed it back to an authorization, when it had already been an appropriation, and was waiting to be expended. Now they have reached a time when they can expend the money

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and they find that there is only an authorization instead of an appropriation. It strikes me that that is an emergency. The nec ssity for this building is very urgent.

Senator OVERMAN. Have you not any building there at all?

Senator SHEPPARD. No, sir; none at all. The old court building is being used as an appraiser's store, and it is absolutely inadequate for the purpose.

Senator OVERMAN. What will that be used for after you get this?

Senator SHEPPARD. It will be enlarged and used for a court when the authorization is made available in the regular appropriation bill next year.

Senator OVERMAN. Is that all you want?

Senator SHEPPARD. That is all as to that item. I have one or two other little items here to submit to you and let you use your own judgment. I shall be satisfied with whatever you think is right in these matters. I do not wish to insist on anything that is not proper.

Senator OVERMAN. The only question in our minds is whether it can go in this bill or not. The merit of it is all right.

Senator SHEPPARD. Of course if you can not put it in this bill, if you do not think you can consistently do that, I shall have no objection; but it seems to me that this is in a legitimate sense a deficiency, because there is a failure of funds to carry out a purpose already authorized by the letter of the law, and a failure purely through an oversight in the House.

Senator OVERMAN. Suppose you explain to me how the Appropriations Committee made the change.

Senator SHEPPARD. I was mistaken when I said it was the Appropriations Committee. It was the language of the last public buildings bill that made the change. We had $65,000.

Senator OVERMAN. Was this matter taken up before the House Appropriations Committee?

Senator SHEPPARD. I do not think it was.

Senator OVERMAN. All right, Senator; we will consider it. What are the other matters?

Senator SHEPPARD. I am satisfied you will look into it and do what you think is the proper thing do to. I only wish to emphasize the necessity of immediate action along this line. There is a crying necessity there. It is one of the leading ports of the country, and they have not any separate building for appraiser's stores. We have had this appropriation pending for three or four years; and now, when we finally reach the point where the Architect's Office is ready to make the plan, we discover that this prior appropriation has been changed into an authorization and merged into a large authorization for other purposes.

Senator OVERMAN. Suppose we make this appropriation: The Architect says he is three years behind. We can not get any buildings in my State.

Senator SHEPPARD. The first part of this appropriation was made in 1911.

Senator PERKINS. Is there no appraiser's building in Galveston?

Senator SHEPPARD. No, sir; no separate appraiser's building.

Senator PERKINS. That is becoming a pretty important port now.

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Senator SHEPPARD. The other part of the appropriation was made in 1910. We have been waiting now for over three years.

Senator OVERMAN. Have you got your plans prepared?

Senator SHEPPARD. They were ready to prepare them when they found the condition of this authorization. I submit the matter to you, Senators, with the hope that you can find that you can insert it in the bill.

MOTOR BOAT FOR CORPUS CHRISTI COLLECTION DISTRICT.

There is one other little item. There was an act passed on February 10, 1913, authorizing and directing the Secretary of the Treasury to purchase one gasoline motor boat for service in the customs collection district of Corpus Christi, Tex., at a cost not to exceed the sum of $6,000. When we came to buy that boat, under the consolidation scheme that Mr. Taft put in operation, the nominal district of Corpus Christi was changed to the district of Laredo; and the auditor held that under the terms of this act the Laredo district could not use the money and could not have the boat, although it was intended that that very district should have the boat.

Senator OVERMAN. Suppose you read us your amendment.

Senator SHEPPARD. I did not frame any amendment. I just have the letter here from the Secretary.

Senator OVERMAN. There is no trouble about doing that. I wish you would frame an amendment and send it down here.

Senator SHEPPARD. Shall I frame it and introduce it in the Senate, or just send it down here?

Senator OVERMAN. No; just send it down here.

Senator SHEPPARD. All right.

Senator OVERMAN. You simply want to have the money appropriated to buy a boat for that purpose?

Senator SHEPPARD. Exactly. It is simply a change in terminology.

Senator OVERMAN. That is all right.

Senator PERKINS. We put it in the sundry civil appropriation bill, I think.

Senator SHEPPARD. It was a separate act.

Senator PERKINS. I know we passed on it. It is all right.

Senator OVERMAN. I wish you would get a letter from the department saying that they approve this. We want to keep our records straight.

Senator SHEPPARD. All right; I will do that. Do you mean from Secretary McAdoo?

Senator OVERMAN. Yes.

Senator SHEPPARD. All right.

CLAIM OF MRS. MARTHA HAZELWOOD.

I will read to you a memorandum I have here, and then ask your judgment about whether it is a proper subject for this bill or not. This is a claim of Mrs. Martha Hazelwood, Senate bill 2668. The claim was considered by the Interior Department, and of the $5,635 that was originally claimed the Commissioner of Indian Affairs recommended a settlement of the claim for the sum of $2,940. Subsequently, when the Court of Claims had refused a judgment because

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the evidence upon which the recommendation for payment had been made by the Interior Department had been lost in Congress through no fault of the claimant, the committee of the House of Representatives unanimously reported in favor of an appropriation in the sum recommended by the Secretary of the Interior.

This bill was referred to the Secretary of the Interior, and he has reported to the Senate Committee on Indian Affairs recommending favorable action upon the bill. Of course this recommendation goes to the passage of the bill, referring the case back to the Court of Claims. In that connection there is absolutely no question as to the Court of Claims awarding a judgment for the amount of the allowance, $2,940.

Finally, it may be stated that Mrs. Hazelwood is now about 80 years old, has been stricken with paralysis, is bedridden, and that if she is ever to receive any benefit from this just claim, unless relief is very soon given, in the natural order of things she will never personally receive the benefit.

What do you think of that?

Senator OVERMAN. That could not go on this bill, because if it did there would be hundreds of others. It is a very meritorious claim.

(Thereupon, at 4.30 o'clock p. m., the subcommittee adjourned until to-morrow, Wednesday, September 24, 1913, at 10.30 o'clock a. m.)

WEDNESDAY, SEPTEMBER 24, 1913.

The subcommittee met at 10 o'clock and 30 minutes a. m.

Present: Senators Overman (acting chairman), Bryan, and Perkins.

Hon. Robert F. Broussard, Representative in Congress from Louisiana; Alfred P. Thom, general counsel of the Southern Railway, appearing for the advisory committee of railroad companies; Luther M. Walter, of Chicago; Aldis B. Browne, of the city of Washington, and others appeared.

The ACTING CHAIRMAN (Senator Overman). Mr. Broussard, we will hear you.

STATEMENT OF HON. ROBERT F. BROUSSARD, REPRESENTATIVE IN CONGRESS FROM LOUISIANA.

Representative BROUSSARD. Mr. Chairman and gentlemen of the committee, I have just a short statement to make with regard to the provision in the bill abolishing the Commerce Court.

THE COMMERCE COURT.

About two years ago the Interstate Commerce Commission refused to grant an order in matters pertaining to transportation over short lines of railroad connecting with trunk lines, cases which have become known as tap-line cases. The commission having refused to grant an order, an effort was made by the owners of these short roads to have a review of the order of the commission or, more properly speaking, the failure of the commission to grant it, a matter which they thought was in law a matter of right. The Commerce Court, after having

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granted a preliminary order to review the refusal of the commission to grant the relief sought, following a decision of the Supreme Court denying the right of review in the court in matters where the commission had refused to grant an order, on its own motion, dismissed the tap-line cases.

Immediately upon that action being taken the railroad commission of Louisiana, through the office of the Attorney General, appealed to me to secure some legislation that would give the Commerce Court the right to review the failure or refusal of the Interstate Commerce Commission to grant an order. The reason of that was that there were some one hundred short railroads in the South connecting industrial concerns, mostly lumber mills in the forests, with trunk roads. The owners had constructed these roads to carry their lumber to the trunk lines of the country in order to reach the country's markets. Practically one-half of those roads were located in Louisiana, some of them in North Carolina, Tennessee, and Arkansas, and I believe some in Florida, but of that I am not sure. Half those roads, as I said, were located in Louisiana. As a result of the commission's finding, in response to the complaints made by these shippers, I undertook to secure legislation granting the court the same right of review where the commission neglected, failed, or refused to issue an order, as the courts had that jurisdiction where the commission had issued an affirmative order.

Just as soon as this movement was started, then those Members of Congress who were entirely opposed to the Commerce Court, sought to meet this effort by abolishing the court. We had hearings before the committee of which I was then a member, the Interstate and Foreign Commerce Committee, and we took the two propositions and made one of them, that is, the proposition to abolish the court brought forward by those who were opposed to extending the jurisdiction of the court, and the bill which I had introduced to enlarge the jurisdiction of that court to include review of negative orders. Congressman Borland, of Missouri, introduced another bill of a similar character to give review jurisdiction to the Commerce Court over negative orders of the commission.

The Borland bill went to the Judiciary Committee of the House. It was considered by the committee, and the committee reported unanimously in favor of it. The result before the Interstate and Foreign Commerce Committee, however, was that instead of reporting in favor of the extension of the jurisdiction of the Commerce Court, that committee failed entirely to report. Congress did not act on the Borland bill.

It was late in the session and it died with the Congress. But subsequently an appropriation bill similar to this bill was considered by the Committee on Appropriations, and a rider was put in the bill as it is in this bill abolishing the court. The matter came before this committee and it was rejected. Of course, I do not need to go over that.

Senator OVERMAN. You are mistaken, I think, as to abolishing the court. It was done in this committee and the differences between the two Houses went into conference and it was changed.

Representative BROUSSARD. The House then passed it.

Senator BRYAN. What was the net result?

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Representative BROUSSARD. The net result was that the court continued with a limited appropriation; not covering the entire year, it is true, but an appropriation was made to cover a given period.

Senator BRYAN. It was an abolishment, practically; it was starving the court.

Representative BROUSSARD. The purpose, apparently, being to starve the court. No employee of the Commerce Court has been paid, I am informed, since the 1st of July of this year.

At this session the House found itself in a very singular position. By caucus action no committee could report, except on matters coming before them, except by specific authorization of the caucus.

The Judiciary Committee was not one of the committees that could report bills nor was the Interstate and Foreign Commerce Committee authorized to make any report.

So those who sought to abolish the court and those who sought to extend the jurisdiction of the court found themselves unable to get any report out of either committee. The advocates of the abolishment of the court sought by a novel way to secure action, and a majority of the Committee on Interstate and Foreign Commerce certified to the Appropriations Committee a bill introduced by Mr. Sims of Tennessee to abolish the court and urged its inclusion in this bill. Then the Rules Committee brought in a proposition permitting the Appropriations Committee to include it in the bill despite the fact that the bill had not been reported and no hearings had been had upon it. That rule was adopted by the House, and as a result we have this provision in the bill before you.

Now, I want to point out the difficulties which we encounter, due to this careless and vicious method of legislation. Aside from the question whether the court ought or not to be abolished, but looking simply at the effect of the court's abolishment as provided for in the bill. The first bill that was recommended to be put into this bill for the abolishment of the court failed to make provision for cases that had been submitted to the Supreme Court or cases pending before the Commerce Court. The provision had been prepared so hurriedly and carelessly that nothing was said about those cases. There were cases pending before the Commerce Court at that time and some are still pending, among which are the tap-line cases. These cases had finally reached the court in this wise after much discussion; the commission had changed its own position with regard to the tap-line cases, and concluding there was a question of law of sufficient importance for them to issue an affirmative order, they had issued the order, thus permitting the question of law involved in the tap-line cases to come before the Commerce Court. Some of those cases had been consolidated. Four, I think, from Louisiana and one from Missouri had been taken and consolidated, and that case is pending and has already been argued before the Commerce Court.

The bill recommended failed entirely to provide for the determination of some 18 or 20 cases that had come from rulings of the commission and had left those cases suspended in the air. The attention of the House Appropriations Committee being called to that fact the committee sought to remedy this fatal defect and make provision to meet this condition. The provision that is in the bill now protects those cases that have been argued and are pending in the Supreme

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Court of the United States, but it makes no provision whatever for the dozen cases pending before and submitted to the Commerce Court, among which are the tap-line cases.

Senator OVERMAN. How many cases are now pending?

Representative BROUSSARD. I had a list of 12 cases. There are five tap-line cases consolidated into one because of their kindred nature. In reality there are five cases of the short roads of the country affected by the ruling of the commission now pending, argued, and submitted to the Commerce Court. The hasty, ill-advised legislation proposed leaves the tap-line cases without power to have the law involved interpreted by any court of the land. Those cases under that provision can not go anywhere because no provision is made for them to go anywhere. That will compel the tap line people and the other people interested in these cases to begin all this litigation over again. They have been two years now trying to get a judgment of the court deciding whether the trunk lines are right or whether the tap lines are right; much money has been spent, much time consumed to determine them. Now, at the last moment the House goes to work and provides that the court shall continue in existence, that it shall hold jurisdiction over those cases and other cases pending there, and yet the judges are abolished at once, so that there is a court and cases pending before the court and no judges to try, decide, or dispose of them.

Senator BRYAN. The Attorney General, when before us yesterday, said that he would submit an amendment to cover that point.

Representative BROUSSARD. I am merely calling attention to that in order to show just how ill advised this legislation is; to point out the necessity to strike out this provision, so as to take it up in the regular and orderly way. It has not been considered at all. No committee has had hearings upon it. So this provision is brought up here, written by a Member of the House, and it is proposed to be made a part of this legislation without any consideration of the interests involved in that legislation. Surely experience has taught a better way to legislate.

There are a great many people who wanted to be heard before this committee. On account of the interest taken by the Railroad Commission of Louisiana requesting me to look after this matter I have prepared a list of those who have been witnesses before the committee in behalf of the extension of the jurisdiction of the Commerce Court. They have written to me with regard to hearings and here is a list of those who have signified their desire to be heard by this committee upon the question as to whether the court ought to be abolished or its jurisdiction extended.

Senator BRYAN. The Attorney General called attention to another matter as to the enforcement of existing decrees, especially mandatory injunctions.

Representative BROUSSARD. There is a provision so far as cases pending before the Supreme Court are concerned.

Senator OVERMAN. Do you want the persons on the list of witnesses you have prepared to come here and be heard?

Representative BROUSSARD. They have expressed a desire to be heard.

Senator OVERMAN. How long will it take to get them here? Do they live in Louisiana?

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Representative BROUSSARD. They live all over the United States, some in Boston and in fact in the different sections. They are the representatives of business organizations, shippers generally.

Senator OVERMAN. We have to get the bill out of committee in the course of a week, if we can. I see it stated in the papers this morning that we declined to hear the shippers. We will hear anyone who wants to be heard. I see a newspaper man now present, and I wish to say in his presence that we have never declined to hear anybody. Several lawyers representing shippers state that they would like to have their remarks when they were formerly before the committee incorporated in our hearings now. If those on your list have been heard we can have their statements incorporated in our record. Have they been heard before?

Representative BROUSSARD. Some of them.

Senator OVERMAN. Can they say any more than they have already said?

Representative BROUSSARD. I doubt it.

Senator OVERMAN. Can we not incorporate what they have said heretofore in the report of this hearing?

Representative BROUSSARD. Thinking that that might be done, I made this list, and I have here the hearings before the Judiciary Committee of the House had at the present session of Congress where most of these gentlemen appeared. If their testimony given then could be included here I thought that would facilitate matters.

Senator OVERMAN. We have no objection to having the testimony of those gentlemen printed in these hearings.

Senator BRYAN. It will not be necessary to read it, but you can call attention to the names and the pages in the House hearing so that not only members of the committee but all Members of the Senate can readily identify the matter.

Senator OVERMAN. It has been printed as a document.

Representative BROUSSARD. Yes; June 18, 1913, and June 21, 1913, "Hearings before the Committee on the Judiciary of the House of Representatives."

Senator PERKINS. What action did the Judiciary Committee of the House take this year?

Representative BROUSSARD. The Judiciary Committee, under the methods by which we are proceeding, is precluded from making a report upon anything except by unanimous or caucus consent. We are not considering in the House anything but certain matters which have been agreed to by unanimous or caucus consent, and no action has been taken by the committee. The Judiciary Committee, however, at the last Congress reported in favor of the extension of the jurisdiction of the Commerce Court.

Senator OVERMAN. We have stated to all gentlemen who requested to be heard that we would be glad to hear them, and the newspaper account published this morning was erroneous. I have a letter here from Mr. Daish, stating that he would like to be heard, but he is away and will not return to the city until about the 1st of October, and he thought his remarks made before the subcommittee last January when it was considering the legislative, executive and judicial appropriation bill might be incorporated. I submit his letter to be printed in the record of our hearings, and in compliance with his request the matter he refers to will also be printed in the hearings.

(See Appendix A.)

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Mr. Walter has requested to be heard and we have granted him a hearing, and Mr. Thom is here whom we have granted a hearing. I have instructed my clerk to invite anyone who wanted to be heard to come. And yet the newspapers state this morning that we have declined to hear the shippers.

Senator BRYAN. Mr. Broussard, will you now identify the document?

Representative BROUSSARD. It is Hearings before the Committee on the Judiciary on House bill 5902. This was a bill introduced by me in the House to extend the jurisdiction of the Commerce Court to include negative orders and to relieve the Supreme Court of certain classes of cases. The Supreme Court, last year, decided five hundred and ninety odd cases and left 604 cases, as I remember, pending on its docket. The court is about two years behind with its docket. The bill upon which these hearings were had and on which these shippers appeared, proposed to make the Commerce Court the final or appellate court for insular cases, for bankruptcy cases, and for patent cases, and for other classes of cases.

Senator PERKINS. That is new legislation.

Representative BROUSSARD. Yes; it is new legislation; but the hearing is upon that subject and it includes the views of the shippers with regard to the proposed abolishment of the court and the extension of the jurisdiction of the court to include review of negative orders, as well as the relief of the Supreme Court.

Senator BRYAN. Were there any hearings before the House committee which had this deficiency appropriation bill before it as to the Commerce Court?

Representative BROUSSARD. No; none whatever; this matter went before the Rules Commttee after the rule had been introduced. There were no hearings either before the Rules Committee or the Appropriations Committee of the House, though I specially requested to be heard.

Senator BRYAN. My purpose was to get you to identify any hearings on the subject that might be made available for us.

Representative BROUSSARD. There were no hearings on the subject before any of the House committees when this deficiency appropriation bill was being considered. I asked for hearing of each committee, but the Appropriation Committee reported this provision of the bill without any hearings, just as the Rules Committee had previously reported the rule without hearing, though I had asked to be heard. Such method of legislating should not be tolerated.

Senator OVERMAN. We have another document of hearings before this committee on the legislative, executive, and judicial appropriation bill for the fiscal year ending June 30, 1914. We had full hearings before this committee and we have them before us, but still we are willing to hear anyone who wants to be heard; we will welcome their coming.

Representative BROUSSARD. Senator, I have no doubt of that at all. I suggest to the committee, however, that this hearing before the House Judiciary Committee be incorporated in your hearings now. The supply is practically exhausted. I have had such demands for the document that I have practically taken all the copies that the Judiciary Committee had. They turned them over to me and I have sent them all over the country. There are probably 10,000 organizations of shippers interested in this matter. We did

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not have enough copies and had to have them reprinted three times, and I doubt whether you can get copies enough unless you will put it into your record.

Senator OVERMAN. If there is no objection and if the supply is exhausted it can be done.

Senator BRYAN. We had better do that.

Senator PERKINS. That seems to be the proper course to pursue.

Senator OVERMAN. Then let those hearings be incorporated.

(See Appendix B.)

Representative BROUSSARD. My plea here is for orderly legislation. Why this unseemly haste in this matter? Surely a matter involving so delicate a question as the jurisdiction of the courts of the country would seem to require more care than is here exhibited. Why not strike out this provision and consider this question in the regular and orderly way? I am very much obliged to you, gentlemen.

STATEMENT OF ALFRED P. THOM.

Mr. THOM. Mr. Chairman and gentlemen of the committee, I shall not impose upon the time or the patience of the committee in discussing any question relating to the policy which Congress should adopt in respect to retaining or abolishing the Commerce Court. I shall confine my attention to a certain substantive provision of the bill as it appears here in regard to the distribution of the jurisdiction of the Commerce Court back to the various Federal courts of the country. When I come to consider the bill in respect to that matter I find that there is an alarming departure from the provisions of the law which have heretofore obtained in regard to the powers and procedure of the courts. The committee will find the provision to which I allude beginning on page 23 of the bill, line 2, with the words "no preliminary," and extending down to the word "apply" in line 8 on page 24.

The chairman of the subcommittee will doubtless recall a very elaborate consideration that was given by the Judiciary Committee of the Senate and afterwards by the Congress of the United States to section 266 of the present judicial code. That section governs the method of procedure when the statute of a State or the order of a State commission was attacked in a Federal court on the ground of alleged unconstitutionality. It is a section which provides for a hearing before three United States judges before a statute of a State or the order of a State commission can be enjoined or declared void on the ground of repugnancy to the Constitution of the United States.

His honor, Senator Overman, will recall the extreme care that was taken in the discussion of that matter and the elaborate consideration which was given by the Judiciary Committee of the Senate and by the Senate itself to that provision of law before it was finally put in concrete form in the statutes.

Senator OVERMAN. There were very full hearings before the Judiciary Committee and some of the finest speeches I ever heard before that committee were made on that subject.

Mr. THOM. The principal points in which there is now a departure in this bill were there considered and discussed with elaboration. Before proceeding to discuss what those points are I call the attention of the committee to the fact that the provision which I am now about to consider relates not only to suits involving orders of the Interstate Commerce Commission, but covers likewise suits attacking the

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statutes of a State and the orders of a State commission on the ground of repugnancy to the Constitution of the United States.

On page 24 of the act as it passed the House, beginning at line 15, there is the following:

> The provisions of this section shall also apply to the issuing and granting of preliminary injunctions and restraining or stay orders suspending the enforcement, operation, or execution of, or setting aside, orders made by any administrative board or commission created by and acting under the statute of a State—

and so forth.

So this provision here in an appropriation bill is forced upon the consideration of Congress under the arbitrary conditions of giving Congress the choice between providing for the urgent needs of the Government from a financial standpoint, accompanied by an ill-considered substantive provision of general law on the one hand or of denying that subsistence to the Government of the United States on the other, in order to get rid of some substantive provisions of law forced, I say, upon Congress under those abnormal and urgent and controlling conditions, we find a most marked departure from the general law relating to the judiciary of this country.

Senator OVERMAN. Do you mean to say, Mr. Thom, that in abolishing this court the House attempted to add new legislation in regard to injunctions different from the present law?

Mr. THOM. I do. I mean to say that if this bill is enacted as it stands it cuts up by the roots section 266 of the Judicial Code, and Congress is asked to do that in this bill under the compelling force of supplying the needs of the Government, when not three years ago calmly and deliberately and dispassionately the proper committee of the Senate considered these questions in relation to a general system of law and adopted this Judicial Code with this provision in it, and now the whole policy of Congress—the whole policy of the Government—is to be reversed under the urgency of supplying the monetary needs of the Government.

I contend, therefore, Mr. Chairman and gentlemen of the committee, that if Congress feels it must resort to this unnatural means of legislation on general subjects in an appropriation bill, if it feels that that is a wise way of adopting deliberate policies for this country, at least it should not go to the extent of cutting up by the roots a well-matured policy of Congress in regard to the method of judicial proceedings which involves the very spirit and substance of justice.

Your honor, the chairman of this subcommittee, will remember that in section 266 of the Judicial Code it was provided that there should be a court of three judges before an interlocutory injunction should be issued against the law of a State or a rule of a commission of a State.

Congress then realized, after discussion and not as a matter that passed without due consideration, the difficulty that might come in getting those three judges together, the time that might elapse before their convenience would permit them to assemble, the fact that other matters in expedition under the laws of this country might be then engaging their attention, and that there was no compelling power anywhere in the statutes of the United States to control their assembling together. Congress then realized that under the judicial system of this country causes relating to the Sherman Antitrust Act

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are given preference, and that a judge needed for the consideration of these matters might then be engaged in some duty paramount of and controlling importance which would prevent his coming to an early session of three judges. Congress, I say, further realized that there was no power conferred by the statutes of the United States by which to compel the attendance of a court so provided for. It realized that that meant an interval between a complaint preferred and the hearing of it by three judges of the United States, and it was therefore expressly provided that until those three judges could meet one judge could issue a temporary restraining order.

Senator OVERMAN. Until he could call together with him the other two judges.

Mr. THOM. Until he could get the three judges together. That is all cut out of this bill. There is no way on earth of getting a temporary restraining order until you get the three judges together. No matter how great the destruction of property rights, no matter how clear the case, no matter how the other judges may be engaged in the performance of their duties and unable to come together in an assembled court, there is no way of bridging over this interval and keeping rights in statu quo until a court may assemble together. In section 2266 of the Judicial Code it is provided as follows——

Senator BRYAN. Suppose you put the whole section in, Mr. Thom.

Senator OVERMAN. Just read it.

Mr. THOM. I will read it, and I should like to ask the committee to follow my reading of this section with the reading of the provision of the bill as it is proposed now for consideration:

Section 266. No interlocutory injunction—

You see no word "preliminary" there now—

No interlocutory injunction suspending or restraining the enforcement, operation, or execution of any statute of a State by restraining the action of any officer of such State in the enforcement or execution of such statute shall be issued or granted by any justice of the Supreme Court, or by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, upon the ground of the unconstitutionality of such statute, unless the application for the same shall be presented to a justice of the Supreme Court of the United States, or to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a justice of the Supreme Court or a circuit judge, and the other two may be either circuit or district judges, and unless a majority of said three judges shall concur in granting such application. Whenever such application as aforesaid is presented to a justice of the Supreme Court, or to a judge, he shall immediately call to his assistance to hear and determine the application two other judges: *Provided, however*, That one of such three judges shall be a justice of the Supreme Court or a circuit judge. Said application shall not be heard or determined before at least five days' notice of the hearing has been given to the governor and to the attorney general of the State, and to such other persons as may be defendants in the suit: *Provided*, That if of opinion that irreparable loss or damage would result to the complainant unless a temporary restraining order is granted, any justice of the Supreme Court, or any circuit or district judge, may grant such temporary restraining order at any time before such hearing and determination of the application for an interlocutory injunction, but such temporary restraining order shall remain in force only until the hearing and determination of the application for an interlocutory injunction upon notice as aforesaid. The hearing upon such application for an interlocutory injunction shall be given precedence and shall be in every way expedited and be assigned for a hearing at the earliest practicable day after the expiration of the notice hereinbefore provided for. An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction in such case.

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Mr. WALTER. Pardon me, Mr. Thom, but that section was amended March 3, 1913, by inserting a reference to an order of a State commission——

Mr. THOM. I understand that.

Mr. WALTER. And there was also added a certain provision for abating a suit in the Federal court until the State court had passed upon a similar suit.

Senator BRYAN. Let us put in the record of the hearing section 266 as it has been amended.

Mr. THOM. If you will let me, I will read the first amendment. I do not think it is necessary to put in the record the final provision, the second amendment, for the reason——

Senator BRYAN. Let the amendments be stated so as to make section 266 read as follows:

Mr. THOM. I will read it, but I want to say there is one provision here extending it over the orders of the commission of a State, which I previously alluded to. I will read that.

Senator BRYAN. The section as amended ought to go into the record for the convenience of Senators.

Mr. THOM. Yes, section 266, as amended March 3, 1913.

Senator BRYAN. Why not read it?

Senator OVERMAN. Read it in full as amended.

Senator BRYAN. Read such parts of it as you see fit, and then let it all be put in the record.

Mr. THOM. As amended March 3, 1913, section 266 is as follows:

No interlocutory injunction suspending or restraining the enforcement, operation, or execution of any statute of a State by restraining the action of any officer of such State in the enforcement or execution of such statute—

Now the amendment comes in—

or in the enforcement or execution of an order made by an administrative board or commission acting under and pursuant to the statutes of such State.

Then it follows just as I have read it down to a subsequent portion of the statute which relates to a different subject not in reference to the method of getting the injunction. That additional provision, at the end of the section, is as follows:

It is further provided that if before the final hearing of such application a suit shall have been brought in a court of the State having jurisdiction thereof under the laws of such State, to enforce such statute or order, accompanied by a stay in such State court of proceedings under such statute or order pending the determination of such suit by such State court, all proceedings in any court of the United States to restrain the execution of such statute or order shall be stayed pending the final determination of such suit in the courts of the State. Such stay may be vacated upon proof made after hearing, and notice of ten days served upon the attorney general of the State, that the suit in the State courts is not being prosecuted with diligence and good faith.

So that last provision has nothing to do with the argument I am now presenting.

I should like to have the whole of section 266 as it now stands appear at this point in my remarks.

Senator OVERMAN. Certainly; it will be inserted.

(The section referred to is as follows:)

SEC. 266. No interlocutory injunction suspending or restraining the enforcement, operation, or execution of any statute of a State by restraining the action of any officer of such State in the enforcement or execution of such statute, or in the enforcement or execution of an order made by an administrative board or commission acting under and pursuant to the statutes of such State shall be issued or granted by any justice of

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the Supreme Court, or by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, upn the ground of the unconstitutionality of such statute, unless the application for the same shall be presented to a justice of the Supreme Court of the United States, or to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a justice of the Supreme Court or a circuit judge, and the other two may be either circuit or district judges, and unless a majority of said three judges shall concur in granting such application Whenever such application as aforesaid is presented to a justice of the Supreme Court, or to a judge, he shall immediately call to his assistance to hear and determine the application two other judges: *Provided, however*, That one of such three judges shall be a justice of the Supereme Court or a circuit judge. Said application shall not be heard or determined before at least five days' notice of the hearing has been given to the governor and to the attorney general of the State, and to such other persons as may be defendants in the suit: *Provided*, That if of opinion that irreparable loss or damage would result to the complainant unless a temporary restraining order is granted, any justice of the Supreme Court, or any circuit or district judge, may grant such temporary restraining order at any time before such hearing and determination of the application for an interlocutory injunction, but such temporary restraining order shall remain in force only until the hearing and determination of the application for an interlocutory injunction upon notice as aforesaid. The hearing upon such application for an interlocutory injunction shall be given precedence and shall be in every way expedited and be assigned for a hearing at the earliest practicable day after the expiration of the notice hereinbefore provided for. An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction in such case. It is further provided that if before the final hearing of such application a suit shall have been brought in a court of the State having jurisdiction thereof under the laws of such State, to enforce such statute or order, accompanied by a stay in such State court of proceedings under such statute or order pending the determination of such suit by such State court, all proceedings in any court of the United States to restrain the execution of such statute or order shall be stayed pending the final determination of such suit in the courts of the State. Such stay may be vacated upon proof made after hearing, and notice of ten days served upon the attorney general of the State, that the suit in the State courts is not being prosecuted with diligence and good faith.

Mr. THOM. It will be observed, therefore, that Congress in the adoption of the Overman Act, acting separately in the year 1910, deliberately adopted the provision of law as I have read it first, and that was subsequently considered by Congress in connection with the judicial code and was then deliberately made section 266 of the judicial code; that in 1913 that section was again considered by Congress and the general policy of that section was continued in the statutes of the United States, all the provisions I have spoken of being made to apply not only to the statute of a State but to the administrative orders of a State commission.

Now, after that oft repeated action by Congress, under the urgency of appropriating the money for the Government to live, in an appropriation bill that well-considered, that often considered, provision of the substantive law of procedure in the Federal courts is cut up by the roots, and the relief which was given on these three separate occasions by Congress to the temporary conditions that might exist in respect to the rights of litigants is withdrawn.

Now, may it please the committee, I do not think that this wise, just, fair, and well-considered policy in respect to so important a matter ought to be made to go through Congress under the coercion of an appropriation bill. In a matter involving so distinctly the constitutional rights of the citizens of this country, in a matter so fundamental as this is, it is but fair, if there is to be a change, that it should be considered on the merits of that question alone, and without the coercion of a supply bill behind it.

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I wish to call the committee's attention to the importance of this provision in respect to a temporary stay order. Suppose that an order of the Interstate Commerce Commission or the order of a commission of a State or the provisions of the statutes of a State relating to rates was required, as this would require it, to go into effect at once, before a court of three judges could be convened. Consider for one moment what that would entail. The putting into effect of a rate, the putting into effect of a body of rates, is not the work of a moment nor is it an inexpensive proceeding. The law requires that when a body of rates or a single rate is to be put into effect, tariffs embodying the changes shall be published and shall be filed with the various commissions.

Now, let us suppose this case: Suppose that the legislature of a State or a State commission were to require a body of rates to be put into effect in respect to interstate commerce. I take that case because it is one of manifest unconstitutionality. Suppose that the Interstate Commerce Commission were to require the putting in of a body of rates in respect to intrastate commerce. I take that because that is a case under the recent decision of the Supreme Court of manifest unconstitutionality and it will best serve to illustrate the point. In each of those cases there would be an instance in which the constitutional rights of the carrier would undoubtedly be invaded. There would also be a case of undoubted propriety of a temporary restraining order until you could get the three judges together.

Under the bill as it now stands before this committee the right to that temporary restraining order is denied and the carrier would be forced to go to the expense and the trouble of preparing his tariffs, of filing them with the commission, of publishing them as required by law, when, the next day after that was done, the convenience of the three judges might enable them to get together and they would enjoin the order, and all the work and all the expense would be gone through with for nothing.

Now, this is no trifling matter. The publications of tariffs frequently cost the carrier as much as $50,000 for one issue. It depends upon the magnitude of the special work that is involved. It requires the publication of tariffs in the modified application all over the United States. It requires the posting all over the United States.

In the cases which I have assumed—cases of clear unconstitutionality—the provisions of your law would afford no relief until the slow gathering of the unenforceable attention of three judges to constitute a court.

Now, is that wise legislation? Is it fair legislation? Three times in the last three years Congress has said it was not—in the adoption of the Overman bill, in the adoption of the judicial code, and in the amendment of 1913.

Senator OVERMAN. Suppose the case was one of irreparable injury?

Mr. THOM. I was giving a case of irreparable injury. I will give others. Suppose the case of a manifestly unconstitutional act in respect to the rates themselves. Suppose the States or the Interstate Commerce Commission should take it into their heads that some particular service could be required to be done without compensation altogether, or, more likely, at a manifestly insufficient compensation. Under this proposed system of law those unconstitutional

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rates must be put into effect. All the expense of the tariffs must be incurred and business must be done under the unconstitutional rates until such time as the convenience of three judges would permit them to gather and consider the matter. What becomes of your property rights during the time there is no hearing in court? What becomes of your property rights to a fair compensation for your services between the time those rates are ordered given by these commissions and the time you can get a court to gather together to consider them? Is it a part of the wise policy of this Government to confiscate a carrier's property for a given time any more than it is to confiscate it for all time?

Senator BRYAN. Your argument would lead to the conclusion that such an act would be unconstitutional?

Mr. THOM. I think so far as my own judgment goes it would, but that is not the point I am discussing.

Senator BRYAN. I understand that.

Mr. THOM. I am discussing here, with the authorities that have the right to create the policy of the country, what that policy ought to be in reference to the matter. I have always contended in the line of your remark, that there can be no period of time during which a government can take without compensation the use of its citizens' property nor deny the enforcement of any constitutional right, but I am here addressing the judgment of this committee for the purpose of trying to show what would be a fair system of law in respect to this matter.

Senator BRYAN. Of course it is our duty not to put an unconstitutional statute on the books.

Mr. THOM. Undoubtedly: I think as you have suggested: but I am a little shy, Senator, of talking about the Constitution in these days. It does not seem to have many friends. It reminds me of a conference that we had in 1906 in reference to the Hepburn bill. Some of our enthusiastic and then uninstructed friends in respect to the Constitution were claiming that certain features of it were unconstitutional. There was present a gray-haired man with one arm who had fought through the Confederate War and had lost his arm. He arose and rebuked the younger and more enthusiastic men about their faith in the Constitution. He said he had had reason to believe that the best interpretations of the Constitution did not always prevail, for, he said, as he lifted his sleeveless arm, "Behold in me the maimed victim of misplaced confidence in constitutional interpretation." [Laughter.] So I am a little whipped on the Constitution. I do not know whether we ought to mention it in polite society. Therefore, while I believe that a recurrence and coming home to its protecting provisions is essential to the permanence of our institutions, while I pray for that time to come, I am not certain that in these days it has an opportunity of fair consideration.

There are certain other reasons, as it seems to me, relating to the Constitution, which I wish to present. The assumption involved in a suit in court in respect to these matters is that a constitutional right is invaded, at least that there is a claim it has been invaded. The further necessary assumption is that the complainant of an invasion of a constitutional right by the legislative branch of the Government is in the minority as to that question. If he was in the majority he would have controlled the matter and would not be complaining, but

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the complainant of the invasion in respect to a constitutional right is in the minority from a legislative standpoint, and he is helpless except in a court. What is his plea? He comes into court asking the protection of the fundamental law of the land. He comes into court asking that he may enjoy what he claims to be his constitutional right. That is the only place he has to go. By the very conditions of his surroundings he has been confronted with that by the legislative branch of the Government.

Now, ought his way to a hearing on his rights be made easy or difficult? Is it a wise and just policy on the part of the legislative branch of the Government to throw impediments in his way so that he can not even have a hearing in respect to his constitutional rights? All that he can get if you allow him to go before one judge for a temporary restraining order is a hearing in respect to those fundamental rights of citizenship. Does a wise policy require you to put that off until the slow and unenforceable gathering together of three judges so that he may be heard?

You must bear in mind, gentlemen of the committee, that if he goes before the judge of a State no three judges are there required. One judge can not only grant the temporary suspending order but the interlocutory and the final injunction. One judge of a State can do it, and is it possible that the Congress of the United States, representing the national spirit of this people, will not trust one Federal judge to grant a temporary restraining order until three men gather together when there is not a State in this Union that does not permit every act of its legislature and every order of its commissions to be temporarily and finally restrained by the action of a single judge?

Now, is this distrust to be shown by Congress of the judiciary that Congress has created, to the extent even, as I say, of denying to one Federal judge the right to give a temporary restraining order for the few days or the few weeks that it will take to get three judges together? Now, is that necessary?

But there is a broader consideration, may it please your honors, than any I have yet adverted to. Notwithstanding the hostility which has been manifested toward railroads in this country there is no man who will deny that perhaps they are the greatest absolute essential to modern society. You will find nobody asking for their abolition. You will find nobody deliberately contending that they should be made inefficient. You will find all parties and all grades of opinion working to one end, the greater efficiency and greater capacity to do the transportation business of the people. However much we may differ as to means, however much we may differ as to the extent of regulation, none of us differ in the proposition that they ought to be made in someway the most efficient for the service of the public and the most reliable in performing their duties as common carriers.

Now, how are we confronted with that proposition? How does that matter affect this situation? We must remember that whatever may be the future of these companies, at present they are maintained by private capital. Until the Government chooses to take them over and to operate them at public expense they must be maintained by private capital. Therefore, it is in the interest of all the public that until the time comes when they shall be taken over by it sufficient private capital shall be provided to enable them to do efficiently the business of the people.

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Senator OVERMAN. Do you think that time is coming?

Mr. THOM. Diverting for a moment to answer your question, with the maximum limit of earnings fixed by law, without any control over the expense account, and the constant necessity to increase wages, I can not see how those lines can fail finally to meet. I think they are converging now, and I think the time will come earlier than we anticipate when adverse legislation, if continued, will make the private investor refuse to put his money in these enterprises.

I think more than that. I think that we are already in the presence of a suspended railroad development in America. If you, gentlemen, responsible for the success of public policies, will study the question you will see that there is no new railroad construction. You will be amazed to find the small amount each year that is done in the way of constructing new lines. You will see that the policy has been adopted of spending all the money that can be gotten in the development of existing lines of railroad, that the problem now which is engaging the attention of railroad management is the double-tracking, the increasing of yards and passing tracks, the increasing of facilities and efficiency under the existing scope of their properties, and that no money can be had for new railroad construction.

You will find, too, that this construction has been halted at a very unfortunate time for some portions of this country. For instance, you will find that there is a vastly unequal distribution of transportation facilities among the States of this country. For example, you will find that for every 100 square miles of territory in the State of New Jersey there are 30 miles of railroad, and you will find that in Wyoming for 100 square miles there is only one mile and eight-hundredths of railroad. You will find that while in the State of New Jersey there are 30 miles and more of railroad for each 100 miles of territory, in the State of North Carolina that you come from, Mr. Chairman, and in the State of Virginia that I come from, there are only a little more than 11 miles. You will find that the real resources of this country have been barely touched by the hand of development and that there is a need everywhere for an extension of railroad facilities so that men may enjoy properly the fruits of their labor. You will find that we have entered upon an area of arresting railroad development.

Now, why? Why? It is because the development of railroads is dependent upon private means under the present system of law, that no law can be enacted to require a man to put one dollar of his money in this investment, and while that condition exists I think you, gentlemen of this committee, will agree with me it is wise policy to assure the private investor of as equal protection of his investment and in his constitutional rights as that of any other property in which he may make an investment.

Here we find the principle which surrounds and protects the investor in other property to be that the value of his property is ascertained by the capitalization of its legitimate earning capacity. Here we find, in respect to railroads, the proposition advanced, and in many places held, that the value of railroad property must be first ascertained, and its earning capacity limited, without any guaranty that the earnings shall reach the prescribed maximum. And coming back to where we are, here we find a suggestion already having passed the House of Representatives which puts the constitutional protec-

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tion of his investment farther away from the investor in railroad property than from any other investor in property.

There is no other man who invests his private means who can not get a temporary restraining order in order to protect him from irredeemable loss. Here it is provided that there shall be no temporary restraining order, no matter how irreparable a loss may be involved, until you can get three judges together.

Is it wise policy to withdraw that protection from this property, thus dependent upon the favorable consideration of people who have private means? Is it wise policy on the part of the Government to repel them by giving them notice that if they invest in this subject of investment they shall not have the same constitutional protection to their rights that is given in respect to every other class of property in which they may invest?

So it seems to me, Mr. Chairman, clothed as you gentlemen are with the responsibility of making the transportation facilities of the people a success until the Government takes them over, that it is not wise policy for you to adopt a plan by which you will withhold from the investor in this class of property the same constitutional protection that he would have if he made his investment in any other class.

I wish you gentlemen could realize the responsibility and the difficulty of the task before the responsible railroad manager to-day. He is confronted with two apparently irreconcilable obligations. He is expected to find a way of providing the public with every facility which they legitimately require. He is expected now to make unusual efforts to furnish his railroad with steel equipment. He is expected to meet all of the demands of labor for increased wages and to meet all of the high cost of living. He is expected to do that on the one hand and at the same time he is expected to make the investment in railroad securities so attractive to the outside individual investor that he will be able to get the means to do it.

If you gentlemen do not think there is difficulty in that proposition, you are vastly underrating the difficulties under which we find ourselves.

Demands everywhere for new stations, demands everywhere that the crops shall be gotten to market, demands everywhere that there shall be proper facility of travel, demands everywhere for increased safety of travel, demands all the time for increased wages of employees—that on the one hand and on the other hand appeals to you and to me and to the various people of this country who have a little hoarded savings to invest to make us understand that that is the best investment to make. Ought you to increase our difficulties by withholding from us constitutional protection to that investment when it is once made? Is it wise policy? What are you going to gain by it in the long run and in the light of a large policy?

Suppose once the tide sets away and in some other direction even more than it has done now, in the matter of these investments. What will be the consequences? While we all would deplore, as patriots, the necessity of this Government going into the railroad business and taking ownership and control of these properties; while that would introduce dangers in our democratic system of Government which the wildest imagination can hardly compass, how are you going to avert that consequence if you once teach the

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investors of this country that when they invest in railroad property they must give up the idea of constitutional protection to their rights? And this is a step in that direction.

I wish now to call your attention to another change along the same line that is made by this bill. In the judiciary act it is provided that an appeal may be taken——

Senator OVERMAN. Is that the same section?

Mr. THOM. Yes; the last clause of section 266 as it appears in the Code copy. It provides that an appeal may be taken directly to the Supreme Court of the United States from an order granting or denying, after notice and hearing, an interlocutory injunction in such case.

What does this bill do? It strikes out the words "or denying." It gives an appeal if the railroad is able to get an injunction, but refuses an appeal if the injunction is denied.

As I say, Congress, under the leadership of your honor, in 1910 adopted the policy of granting an appeal when an injunction was either granted or denied. Again, when the judiciary act or code was made, that policy was renewed; and again in 1913 it was reenacted as the policy of Congress. Yet some influence has gotten into this bill which strikes out those words now and allows an appeal against anything that the railroads have been able to accomplish in court, but denies an appeal if they have been already beaten in the assertion of their constitutional rights.

What encouragement is that to investment? What can be behind that provision of law except a purposeful declaration of hostility against this class of property? Is it helpful to the maintenance of the efficiency of these essentials of modern civilization for Congress to declare war on investment in this class of property?

I feel that I have already taken up too much of your time. I will say that I have made a draft of a proposed amendment——

Mr. A. B. BROWNE. Before you pass to another subject, Mr. Thom, would you be willing to read at this point section 129 of the Code, which gives an appeal to the Circuit Court of Appeals in all cases, whether an injunction be granted or denied?

Mr. THOM. At Mr. Browne's suggestion I will read into the record section 129 of the judiciary code, which is as follows:

Where upon a hearing in equity in a district court, or by a judge thereof in vacation, an injunction shall be granted, continued, refused, or dissolved by an interlocutory order or decree, or an application to dissolve an injunction shall be refused, or an interlocutory order or decree shall be made appointing a receiver, an appeal may be taken from such interlocutory order or decree granting, continuing, refusing, dissolving, or refusing to dissolve, an injunction, or appointing a receiver, to the circuit court of appeals, notwithstanding an appeal in such case might, upon final decree under the statutes regulating the same, be taken directly to the Supreme Court.

That is the policy of this Government.

I have made a draft of a substitute for this provision to which I shall ask you to listen. I have made it with reference to the bill as it was introduced in the House. I ask, in place of what I have read and have objected to, that there may be substituted the following:

No interlocutory injunction suspending or restraining the enforcement, operation, or execution of, or setting aside, in whole or in part, any order made or entered by the Interstate Commerce Commission shall be issued or granted by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, unless the application for the same shall be presented to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall

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be a circuit judge, and unless a majority of said three judges shall concur in granting such application. When such application as aforesaid is presented to a judge, he shall immediately call to his assistance to hear and determine the application two other judges. Said application shall not be heard or determined before at least five days' notice of the hearing has been given to the Interstate Commerce Commission, to the Attorney General of the United States, and to such other persons as may be defendants in the suit: *Provided*, That if of opinion that irreparable loss or damage would result to the complainant unless a temporary restraining order is granted, any justice of the Supreme Court, or any circuit or district judge, may grant such temporary restraining order at any time before such hearing and determination of the application for an interlocutory injunction, but such temporary restraining order shall remain in force only until the hearing and determination of the application for an interlocutory injunction upon notice as aforesaid. The hearing upon such application for an interlocutory injunction shall be given precedence and shall be in every way expedited and be assigned for a hearing at the earliest practicable day after the expiration of the notice hereinbefore provided for. An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction. In such case, if such appeal be taken within thirty days after the order in respect to which complaint is made is granted or refused, and upon the final hearing of any suit brought to suspend or set aside, in whole or in part, any order of said commission the same requirement as to judges and the same procedure as to expedition shall apply.

I have there attempted, and I hope I have succeeded, to make this conform to the section of the judiciary code to which I have been alluding.

Senator OVERMAN. Why not just copy section 266 right into this bill?

Mr. THOM. Because this refers to interstate-commerce proceedings and that refers to State proceedings.

Senator OVERMAN. How would it do to make some such amendment as this: "As to all proceedings or orders in interstate commerce, section 266 shall apply"?

Mr. THOM. Inasmuch as there are things to be changed, I think probably some such provision as this would be safer.

Senator OVERMAN. Is that exactly the provision of section 266?

Mr. THOM. Exactly the provision of section 266.

Senator BRYAN. Why do you leave out the words "and appeal" in line 21?

Mr. THOM. Because in the next clause they do not seem to be applicable. You will see that those words "and appeal" there relate to the final hearing, and the next clause seems to provide for that. The next clause is:

A final judgment or decree of the district court may be reviewed by the Supreme Court of the United States if appeal to the Supreme Court be taken by an aggrieved party within sixty days after the entry of such final judgment or decree, and such appeals may be taken in like manner as appeals are taken under existing law from the Commerce Court to the Supreme Court.

I thought it was provided for. In the first draft of the amendment I inserted those words, but upon having it reviewed it was pointed out that the next clause covers appeals, and therefore I struck out those two words. I have no objection to their being put in, but they do not seem to be exactly pertinent at that point.

I ask of the committee, if this law is enacted and the redistribution of this jurisdiction is made, that this provision may be substituted in place of the part of the bill to which I have called attention.

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STATEMENT OF LUTHER M. WALTER, OF CHICAGO, ILL.

THE COMMERCE COURT.

Senator OVERMAN. What is your name and business?

Mr. WALTER. My name is Luther M. Walter. I am an attorney, practicing law at Chicago, and am engaged almost exclusively in transportation cases. For almost seven years I was an attorney for the Interstate Commerce Commission, and defended its orders in various district courts of the United States. In 1910 I resigned to go into private practice. So in speaking to you this morning I speak from the standpoint of one who has had actual experience with the method of trying these cases in the district courts of the United States from the standpoint of the commission defending its orders, and in the Commerce Court from the standpoint of one who represents shipping interests as opposed to the interests of the trunk lines.

In speaking here I give my own views and also the views of the Railroad Commission of Louisiana, which I have had the honor to serve in the Shreveport case before the Interstate Commerce Commission and in the Commerce Court and now pending in the Supreme Court of the United States. I speak also for the Yellow Pine Manufacturers' Association, who ship annually over 200,000 cars of yellow pine lumber. I speak also for the Commercial Club of St. Joseph, Mo., an aggregation of shippers, manufacturers, and jobbers of that town in Missouri.

I have been much interested in hearing Mr. Thom tell you of the difficulties that surround the carriers in endeavoring to get a judicial determination of their rights. Before taking up this bill I wish to call attention to the difficulties which surround shippers under the present system. We may go to the Interstate Commerce Commission to-day on a complaint on behalf of anybody. It may be the interpretation of the statute; it may be a question of fact; but no matter what the result, if we are dismissed and lose our case, there is no tribunal to which we can appeal.

Mr. Thom speaks of the constitutional rights of the investors in railroad bonds and stocks and properties; but what does he say of the investors in manufacturing plants and in commodities shipped over this country who are compelled, because they are dismissed before the Interstate Commerce Commission, to pay the charges of these carriers without recourse to any court whatsoever?

We do not ask that the court shall be authorized to pass upon questions of fact. We are content to leave those questions to the commission. The carriers must be content, because the Supreme Court says if there is any substantial evidence in support of the commission's finding of fact against a carrier that finding of fact is final, and on that basis we would be equal; but on questions of the statute the carrier has an appeal, while the shipper has none.

Take, for example, cases from the town of Memphis. Russ & Burgess and Thompson were men engaged in shipping lumber. The commission found that they had been paying 10 cents too much on all their shipments to the Pacific coast, and reduced the rate from 85 to 75 cents. Yet when Russ & Burgess asked to have back the money they had paid the commission said: "No; you are not entitled to it." It said to others: "You have not filed your claim with

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us within the period of the statute, two years." They said: "Why, we filed our claim within two years of the time we paid the money to the carrier. That is when we were damaged." "Yes; but you did not pay the charges until a month or two months after the shipments moved."

There is a plain question of the interpretation of the statute of limitations; yet, under the decisions of the Supreme Court interpreting the judicial code, there is no jurisdiction in any court to entertain such a suit.

When, under the commodities clause, the commission recommended to Congress that a law be passed forbidding any person being interested as a shipper in a railroad that transported the article, so as to completely divorce the two things, the question was thrashed out in a long debate; and the Senators from the lumber sections of the country succeeded in getting, in connection with coal and other commodities, an exception as to lumber and articles manufactured therefrom. Yet, in the face of that, the commission held, in the Tap Line Cases, that where the shipper who furnished the tonnage was the largest owner of the railroad that carried the traffic, the railroad was not a common carrier of that traffic.

You might have a mill out 10 miles on a tap line, and there might be right alongside of you a mill owned by somebody who had no interest in the railroad. He could secure the transportation of his lumber over your line of railroad, and on to St. Louis, from the yellow-pine blanket west of the Mississippi, upon the identical rate, 19 cents, which the man on the trunk line paid; but the men who owned the railroad and owned the lumber through common stock ownership were compelled to transport it down to the trunk line and receive nothing for that service. It was not even a common-carrier service.

The commission declined to make an order; they simply said it was unlawful to do that. We went to the commerce court; and then, after the Supreme Court decided the Procter & Gamble case, they said, of their own motion, that this was a negative order, a dismissal, and that there was no jurisdiction in that court.

We went to Congress then for an amendment, and in the meantime we again went to the commission and said, "Give us some sort of an order that will be affirmative in effect until we can finally have the Supreme Court say what the law is." They consented, and ordered the carriers not to divide the rate with these short-line railroads. We went to the Commerce Court again, and those are the cases that are now pending in the Commerce Court.

When Mr. Thom spoke of arrested railroad development, he failed to point out that in the Southern States, in the lumber territory, this one decision of the commission will do more to prevent the building of railroads than anything else that can be done by way of regulation. The trunk line will not build out to the timber. If you own the timber, the only way you can get it out is to build your railroad, perhaps 20 miles; you incorporate it under the State laws; you carry for everybody——

Senator OVERMAN. Those cases will be transferred under this bill to the district court.

Mr. WALTER. No, sir; if you will permit me, here is what will happen under this bill: I should be loath to say that those who, under

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whip and spur, have driven this bill through the Congress should have done anything to deny to those of us who have been most insistent for congressional relief the right to have determined the question that we have fought to final submission in the Commerce Court. The printing of the record alone before the commission cost us almost $7,500. Those cases have been argued and submitted. The Commerce Court has not yet disposed of them. The court is allowed to exist until December 31, 1913, but the judges are abolished forthwith. There is a provision for cases pending but not submitted. Can it be that those who drafted this provision knew that the tap-line cases had been submitted and not yet decided?

Senator OVERMAN. The Attorney General suggested an amendment along that line which I think is proper.

Mr. WALTER. That may be, but that is only one of the many crude things in this bill which the system under which it was devised undoubtedly brings to pass in appropriation acts.

These cases are left pending. The judges are abolished. There is no way in the world, under the bill, in which they can be decided. Many of the shippers have felt, "What is the use of asking Congress further?" We have been at both ends of the Capitol. We have done all that we can do to show the necessity for an appeal to the courts on this question where we are denied our rights. So it is to-day that we are standing in the last possible stronghold to protect the property rights of the people we represent. There is no provision whatever for the disposition of those six cases.

Senator BRYAN. Let us see. Those cases are pending, but have not been submitted?

Mr. WALTER. They have been submitted. They are now awaiting decree and decision.

Senator BRYAN. Then they are pending and submitted?

Mr. WALTER. Yes, sir. All the matters that I am pointing out have been argued before this committee. We have no complaint to make of the most patient hearing formerly accorded us, and we are thankful for this hearing here to-day. I desire, however, to call attention to the viewpoint of the commission on these matters. Perhaps it is too late to argue that the Commerce Court ought not to be abolished; but if experience as an attorney for the Interstate Commerce Commission teaches me anything, it is that to give the railroads a chance to go all over this country and pick their district courts is to put the Government in an almost indefensible position.

I remember, perhaps, the first case that was assigned to me by Commissioner Prouty to defend. It arose out in California, where the commission had reduced the rate on rough green fir lumber and lath, common grade. The five-day notice was provided for in the statute, so they gave the commission this five-day notice. I took up the record and immediately caught the train. I got out there in time for a day and a half consideration and consultation with the men who had brought the case before the commission. They had had opportunity to prepare their case and file their bill. They gave no notice to the commission that they were going to do that, and it was only after it was filed, and when the day for the argument had been set that they gave the notice.

That illustrates the difficulty the commission will have and the Department of Justice will have. Instead of being able to sit here,

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where all the records are, where the volumes of testimony are, to consult with the commission who have decided the case, and to get the viewpoint of the commission, and, in addition, instead of having the benefit of appearing before men who do nothing but try this kind of cases, they must go out to judges who have their time taken up with everything from "boot-legging" to all sorts of important cases, receiverships, and questions involving vast amounts. The commission will be deprived of its workshop; its employees will be deprived of an opportunity, in an orderly way, to present their defense.

Senator OVERMAN. How many cases have the shippers had before this court since it was organized?

Mr. WALTER. Some 12 or 15, and they have all been dismissed, as they must be under existing law. The carriers will not say that it is fair and just, that there is any equality of opportunity under the law; and I have never yet heard a single railroad attorney or operating man question the fairness of the proposition.

What does the commission say on it? You will find in these records a letter from the then chairman, Commissioner Prouty. I will quote one sentence from it:

> It is not, in my judgment, a wise or salutary thing to lodge in any tribunal arbitrary power beyond what is necessary; and I can see no reason why the legal mistakes of the Interstate Commerce Commission could not and should not be corrected.

In the House there was offered an amendment on this very point, and I will read it. In the draft of the bill as it passed the House, on page 21, after the words "United States," where they transfer the jurisdiction now existing in the Commerce Court to the district courts of the United States, I would add these words——

Senator BRYAN. What are you reading from?

Mr. WALTER. I am reading from the draft of the bill as it passed the House. It is in the first paragraph of the Commerce Court provision.

Senator OVERMAN. You are reading from the draft as it passed the House?

Mr. WALTER. Yes.

Senator OVERMAN. What page?

Mr. WALTER. Page 21 of that draft. It is the first paragraph after making the appropriation for the Commerce Court, after the words "United States," in line 8.

Senator OVERMAN. What page of the draft will that be?

Mr. WALTER. Page 21, line 13, of the bill as it was considered in the House.

Senator OVERMAN. I should like to get the place in the other bill. I see it here on line 13. I see where it is.

Mr. WALTER. I propose to strike out the comma after "United States" and insert a period, and then this sentence:

> The district courts shall also have jurisdiction of all cases brought to enjoin, set aside, annul, or suspend, in whole or in part, any order of the Interstate Commerce Commission, including negative orders dismissing complaints filed before the commission, but not including orders for the payment of money: *Provided, however,* That the provisions of this paragraph shall not be so construed as to give the court the right to substitute its judgment for the judgment of the commission as to matters which are either administrative or legislative in character.

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Senator OVERMAN. Will you submit that amendment to us? If you are going to advocate that amendment, we should like to have it submitted in writing and left with the clerk, showing exactly where you want it to go.

Mr. WALTER. Very well. That will give to every town in this country, to every commercial club, to every shipper, to every citizen—and the condition now is such that under the law the carriers can appeal to the Interstate Commerce Commission and file a complaint—a chance to go to the court and say: "The commission has erred as a matter of law. We want the law interpreted. Then we will go back to the commission."

So, in the Tap-line cases, if a line is not a common carrier of articles which the stockholders of the road produce, the commission is wrong, and they say: "We will gladly correct our error if we have made one." So if the Supreme Court finally says that these lines of railroad down in Louisiana and Missouri and Arkansas and Texas and Mississippi and in all the lumber-producing sections of this country are common carriers, and it makes no difference who owns the stock provided the rates are reasonable and there is no discrimination, the commission says: "We will give you what you are entitled to have."

That can wrong nobody. It puts us on the same basis with the man who transports the commodity over the trunk line. I may say that if this decision of the commission stands—and I think the mistake they made was in holding what they thought the law ought to be and not what Congress had enacted——

Senator OVERMAN. Your amendment does not propose to interfere with the Garver case at all, does it?

Mr. WALTER. Not at all.

Senator OVERMAN. As to findings of fact, you propose to let their judgment stand?

Mr. WALTER. Yes, sir.

Senator OVERMAN. It is only as to questions of law?

Mr. WALTER. Exactly; and I advocate an amendment to the effect that there shall be no interference by the court with the exercise of the judgment or discretion of the commission. We would be the last to allow any tribunal to supersede the commission on questions of fact, because they are the most expert body in the world on those questions.

It, perhaps, is not necessary for me to point out the injustice of the abolition of these judgeships. We will concede, for the purposes of this statement, that it is constitutional to do so. Take, for example, Judge Carland, who for many long years served as a Federal judge out in the eighth judicial circuit. He was designated by the President as one of these additional circuit judges and was assigned to this court. He served out his term and then the Chief Justice reassigned him. He finds himself now, when he is almost ready to retire under the retirement act, absolutely cut adrift.

Whatever wrongs may have been committed by the Commerce Court have been corrected through the agencies and instrumentalities provided by the Constitution and by the chart of the Supreme Court as it has construed the act which the Commerce Court found freshly enacted when it came into existence. There is now no opportunity to stray aside from a beaten path. Yet, without any con-

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sideration whatever in any committee authorized to consider these subjects, we find this complete demolition of the system of laws and regulations. Instead of stopping at the old home—the old courthouse—where these things were thrashed out, in the circuit courts—and there were only nine circuits—we find in the 80 or 90 district courts that we could take a single carload of cotton which originated in Alabama, Georgia, or the Carolinas, to which the same rate would apply in some New England or Canadian mill point, and, if the commission reduced that rate, the carriers, or any one of them, could go into any of the New England State district courts, or into any one of the district courts of these States in the South where it originated, and try the questions of law involved.

The shippers, after the commission has decided in their favor, often elect to have the counsel who tried the case continue. You have provided that after the complainant intervenes in the court there can be no disposition of the case by any agreement with the carriers that does not give him the right to control its disposal. If he elects to go on and prosecute the case to the Supreme Court, he can do it. That gives the shipper the opportunity to present his views continuously; but the carriers have their expert counsel, they have their lines of railroad, their transportation, and all these things in such shape that they can move swiftly, cheaply, expeditiously, from one district court of the United States to another; while the shipper who, with his local counsel, has complained in one place, may find the scene of litigation transferred clear across this country. As it is, under the Commerce Court act, he finds here at the seat of Government an opportunity to present his case, and an opportunity to present the testimony at his own home town to any one of these judges, who under the law can go down there and take the testimony; and they have done that in numberless cases.

I have yet to hear of a single shipper, or to see a single resolution of any body of shippers, opposing the continuance of the Commerce Court or favoring its abolition. You can not find in all the communications that have come to the House or to the Senate, as I am advised, a single petition asking for the action which the House of Representatives has taken—not a single one. On the other hand, you will find contrary action on the part of the greatest aggregation of shippers in this country, namely, the National Industrial Traffic League, with hundreds of members, whose organization was brought about at the time legislation was being perfected—the Hepburn law and the amendment of 1910—to bring about for the shippers of this country equal opportunity with the carriers. All of them have, through their representatives, passed formal resolutions asking the maintenance of the Commerce Court.

That is of record. Who wants the court abolished? Who can profit by its abolition? Nobody but the carriers of this country. That can not be questioned. The Attorney General and the Interstate Commerce Commission both say it would be a serious mistake. The solicitors of the commission, who will be put to the most serious inconvenience, point out that it is a great benefit to them to have the cases brought here.

Senator OVERMAN. Has there been any effort on the part of the railroads to have the court abolished?

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Mr. WALTER. It did appear in the debates in the House that Mr. Hines, one of the most efficient and painstaking of their counsel, had collaborated with Mr. Sims on this bill.

Senator OVERMAN. Oh, that was the charge that was made; but is there any evidence, except somebody's statement on the floor, that any railroad, at any time, or any attorney for a railroad, has been in favor of the abolition of this court?

Mr. WALTER. No, sir; there is not. All that I know is the letter which was put in the record and the statement of Mr. Sims.

The carriers can not but profit, because it stands to reason that when they can pick the court where they desire to go, either on account of a congested docket, or because of the absence of circuit judges, or for any local reason, they have that much the advantage of the Government. Certainly a court which has been created for the sole purpose of trying these questions, which knows what a proportional rate is, which knows what a differential is, which knows what a classification is, which knows all about the adjustment of rates, and is familiar with all the decisions of the commission and the prior decisions of courts, is best equipped to try these questions. There can be no doubt of that.

Senator OVERMAN. Since it has been left to the commission to find the fact, and there is no appeal from its finding, will there be any considerable number of appeals taken just upon questions of law?

Mr. WALTER. There will be, continuously.

Senator OVERMAN. There have been only 12 or 15 cases since the court was organized.

Mr. WALTER. But within a short time after the law was passed these cases began to be brought rapidly. Immediately the Procter & Gamble case comes in, which is this: The owner of a private car line who wants to ship cottonseed oil to his place can not get cars from the carriers in which to put cottonseed oil. He buys his own car and goes down and gets the oil. It is brought back and he puts it on his own private track. Yet the carriers charge him $1 a day for that car of his own while it stands on the private car track, and the commission says that is right. He says: "You are taking my property, which is not serving any railroad, and making me pay the carriers for using my property. That is a deprivation of a constitutional right."

Senator OVERMAN. Perhaps you will get some amendment to the commodities act.

Mr. WALTER. He is paying a dollar a day now on his cars, and yet they say that is a negative order and that he is not hurt by it. The dismissal of his case is equivalent to saying to him: "You pay what the carriers want to charge you during that tme."

Senator OVERMAN. Is not that the fault of the commodities act?

Mr. WALTER. It is the fault, in the first place, as I view it, of the commission in making the decision. Anybody ought to have a right to have the law as it exists now interpreted by the Supreme Court on that question. That is what the Procter & Gamble case was. Since that case has been decided, what shipper wants to go to court on any question where he has lost before the commission? In the first place he is faced with an absolute, complete precedent for any contention he can make.

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That is an illustration of the existing law. Yet this action has been taken without any opportunity to present all these things. The House Committee on Interstate Commerce gave us a two-weeks' hearing and never reported or took any action whatever. The Judiciary Committee of the House—and I think this is a question that is primarily judicial in its nature, to be heard by the judiciary committees of the two House—made a unanimous report immediately and the bill went on the calendar, but we never got any action.

Senator OVERMAN. It was stated on the floor of the Senate by Senator Cummins, and not denied, that the bill that was introduced, which provided for the creation of the court, was written in New York in conjunction with the railroads; that it was a railroad bill.

Mr. WALTER. That may be, but I know something about that conference, because I happened to be with the commission at the time as its attorney. I know that that conference was attended by Commissioner Clements, Commissioner Prouty, the Attorney General, and, I think, Mr. Townsend, now a Senator and who, perhaps, was a Senator then, and some others. They canvassed the matter day after day.

Senator OVERMAN. The railroad men were there, at any rate?

Mr. WALTER. Oh, I think they were heard. That is my understanding; that they were heard. But, anyway, no matter how the legislation got on the books, it was enacted.

Senator OVERMAN. I am very sorry to know that the Interstate Commerce Commission had anything to do with drawing the bill——

Mr. WALTER. I will not say how much they had to do with it.

Senator OVERMAN. Because that bill was a scandal and a disgrace, and everybody admits now that it was a piece of perfidy that was attempted to be passed off on Congress.

Mr. WALTER. I will not say that the commission were responsible for any clause in it, but I do say that they attended the conferences as a result of which the legislation was introduced. I can not say whether they approved any part of it, or even the whole of it; but I do know that these conferences were conferences at which the commission were represented. But even though that may have been a mistake, and even though the decisions and even though the personnel of the court may have been mistakes, the system has been clarified now by the decisions of the Supreme Court and by subsequent legislation; and I can not see why, at this time, there should be any necessity for pitching it all over this country into the various district courts.

I predict that if this legislation is enacted and we go to the district courts it will not be five years until there will be created in the stead of the present Commerce Court a central court with jurisdiction to entertain all these questions and all kindred questions, and perhaps an enlarged jurisdiction, as Mr. Broussard said.

Senator OVERMAN. There might be another court that would take into consideration the patent laws, the land laws, and other things, so as to give them something to do. This court has nothing to do now.

Mr. WALTER. If you will note the statements in these reports of what the judges have done in the various circuits to which they have been assigned, you will see that they have had something to do.

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Senator OVERMAN. Oh, you speak of them as circuit judges? I know nothing about them in that capacity. I am speaking of the Commerce Court.

Mr. WALTER. There has been no lost time. We have cases that we want to file now in the Commerce Court, but what is the use until we know whether or not the water is going to be fit for swimming?

If there are any questions to be asked, I shall be very glad to answer them. This question has been of the highest importance to my clients during the past two years. We have labored in season and out of season and incessantly to get some relief. Even to-day in the Commerce Court we have pending against us by the Department of Justice a motion to dismiss the Tap-Line cases because they are still negative orders, and when we get to the Supreme Court we may find that we are without any jurisdiction in any court and that all our labor has been in vain.

I will hand you the amendment I have read.

Senator OVERMAN. Yes; I should be very glad if you would furnish us the amendment, and we will give it due consideration.

FURTHER STATEMENT OF ALFRED P. THOM.

THE COMMERCE COURT.

Senator OVERMAN. Mr. Thom, may I ask you a question?

Mr. THOM. Certainly.

Senator OVERMAN. You are always very frank. I saw it stated in the papers this morning, and it has been intimated here by the gentelman who has just addressed us, that the railroads were in favor of abolishing the Commerce Court. Has there ever been at any time, directly or indirectly or remotely, any action upon the part of any railroad man for the abolishment of this court?

Mr. THOM. Not that I have heard of. I want to explain the incident that has been referred to here in respect to Mr. Hines.

Mr. Hines is the chairman of a committee of which I am a member, known as the advisory committee of railroads. That committee consists of Mr. Hines, as chairman; Mr. Harris, of the New York Central; Mr. Trumbull, of the Chesapeake & Ohio; Mr. Delano, of the Wabash, and myself. It has been our policy in dealing with Congress to try to perfect in any way we could measures which Congress was considering, even in cases in which we took no position in respect to the propriety of the legislation suggested.

For example, this morning, without any expression of opinion in regard to the Commerce Court on my part and without any expression of opinion in regard to the part of the bill abolishing the judges, I have undertaken to do what I could to perfect what is here proposed, if it is adopted. Mr. Hines, in the same spirit, finding that Mr. Sims was considering the question of redistributing among other courts the jurisdiction of the Commerce Court, undertook to point out to the Attorney General first, and finally he was referred by the Attorney General to Mr. Sims, certain defects in the legislation if adopted. He did not mean by that to express an opinion one way or the other in respect to whether the legislation itself should be adopted.

That is the explanation of that correspondence on the part of Mr. Hines. He was merely trying to perfect a system of legislation

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which somebody else proposed, without expressing himself in respect to whether it was wise policy or the reverse.

Mr. WALTER. May I ask a question?

Senator OVERMAN. Yes.

Mr. WALTER. Have the carriers taken any part or endeavored in any way to prevent the abolition of the Commerce Court?

Mr. THOM. I do not know whether the carriers have or not, but I have. I have spoken to Senator Cummins and I have spoken to other Senators, saying that I thought it would be very unwise to abolish the Commerce Court. I have not done that in a representative capacity for the railroads, because I think the railroads had just as soon try their cases out in the various districts as here in Washington. In fact, I never was in favor of the inauguration of the Commerce Court in my representative capacity. In my representative capacity I had just as soon try my cases in the various districts of the United States as here in Washington. But I am a profound believer, personally, in the independence of the judiciary. I believe it is of the highest importance that the three coordinate branches of this Government should be preserved in their independent integrity. I believe that the judiciary is the weakest of the three. As has been so often said, it has neither the purse nor the sword. Its only support is public opinion. The very moment Congress strikes at it in the abolition of courts or in the abolition of judges, my fear as a citizen—and I am talking now as a citizen only—is that you have inflicted on the independence of our three coordinate branches of government a wound so deep that it will finally destroy us.

Your honor understands that I am speaking merely as a citizen now, and not in any representative capacity. If I read the trend of public affairs aright, it is that the executive power is now encroaching upon the legislative power; that the legislative power is now arrayed against the judicial power, and that the judges of this country are on the run; that they are afraid of what Congress may do; and that the independence of that coordinate branch has already been fatally assailed. If I am right in respect to the tendency of the executive in regard to the legislative, the jealousy with which the independence of these three coordinate branches of our Government has in all our history been guarded is now passing away, and the balance between these coordinate branches is rapidly being destroyed.

STATEMENT OF ALDIS B. BROWNE, OF WASHINGTON, D. C.

THE COMMERCE COURT.

Mr. BROWNE. Mr. Chairman, I shall be very brief. I am in hearty accord with the argument presented by my brother Thom in submitting the amendment which relates to the subject matter he has discussed.

The CHAIRMAN. Please state your name and whom you represent.

Mr. BROWNE. My name is Aldis B. Browne. I am of the firm of Britton & Gray, and have been for many years counsel for the Atchison, Topeka & Santa Fe Railroad here. I submitted a letter to the chairman of the committee suggesting certain amendments in respect of the details of the bill, and availed myself of the invitation to be heard this morning, and wish to present to you just two or three

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suggestions. I had in the letter suggested a much more imperfect amendment than Mr. Thom presents in respect of the injunction matter. His argument is so impressive and his amendment so complete that I leave that without further discussion.

In the bill as passed by the House, on page 22, lines 3 and 18, is found a provision in regard to the venue of suits. In substance it is provided:

The venue of any suit hereafter brought to enforce, suspend, or set aside, in whole or in part, any order of the Interstate Commerce Commission shall be in the judicial district where some or all of the transportation covered by the order has either its origin or destination, except that where the order does not relate to transportation the venue shall be in the district where the matter complained of in the petition before the commission arises, and except that where the order does not relate either to transportation or to a matter so complained of before the commission the matter covered by the order shall be deemed to arise in the district where one of the petitioners in court has either its principal office or its principal operating office. In case such transportation relates to a through shipment the term "destination" shall be construed as meaning final destination of such shipment.

These actions, of course, are not local in the sense that they must be brought in any particular district; but the amendment which I suggest in place of this goes back to the act of 1906, the Hepburn Act, and simply substitutes the language of the Hepburn Act for this, and provides that the venue of such suits shall be in the district where the principal office or operating office of the carrier is located.

That gives a habitat or a locus and I think meets some of the argument which has been made by my friend on the other side of the table along the line of suggesting that the railroad company seeks to select its own district wherein to initiate litigation. He suggested that in case of a through shipment it might extend from Alabama to the New England mills. The amendment which we propose, returning to the act of 1906, would restrict that to the district in which the carrier is located; and I may add that it would be in entire harmony with the Federal judicial system in providing that suits against corporations shall be brought in the district of the State wherein they have their principal place of business.

Senator BRYAN. But there may be a number of petitioners, and various petitioners have different headquarters.

Mr. BROWNE. But the order of the commission, of course, designating the defendants and requiring what they shall do, would in a great many cases have a very limited operation.

Senator BRYAN. Suppose there were a dozen companies filing petitions in court before the Interstate Commerce Commission. Then it would be located at the principal office of any one of them.

Mr. BROWNE. The suit could be brought and they could be joined, Senator. A petition could be filed by one, and a joinder with the others would make them all within the same district.

Senator BRYAN. That, it seems to me, would make it possible to have the suit brought in practically any part of the country.

Mr. BROWNE. The language as it stands now is open to the charge that the railroad has——

Senator OVERMAN. It must bring the suit where it has its principal office.

Senator BRYAN. But you want to go back to the language of the Hepburn bill.

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Senator OVERMAN. The Southern Railway has its principal office here. Do you mean that all suits which it brings should be brought in Washington?

Mr. THOM. There is a provision in the Hepburn bill covering the Southern Railway. It says that where a railroad has its principal operating office in the District of Columbia, then the petition shall be filed at the place where it has its principal office. That is in the Hepburn bill.

Mr. BROWNE. Take the Santa Fe Railroad as a concrete example. Its principal operating office, its headquarters, is in the city of Topeka, Kans.

Senator OVERMAN. All suits would have to be brought there, then?

Mr. BROWNE. In that district.

Senator OVERMAN. I understand.

Mr. BROWNE. But on the other hand, Mr. Chairman, the provision of the bill as it stands permits the carrier to go into any district it chooses where there originates any part of the transportation affected by the order, from its initiation to its termini.

Senator BRYAN. No; it says "point or origin or point of destination."

Mr. BROWNE. Then we might have it from the Pacific coast to the Atlantic.

Senator BRYAN. Yes.

Mr. WALTER. Take the wool case, as an example.

Mr. BROWNE. Yes. So it could be brought in any district where the plaintiff sought the relief.

Senator BRYAN. Yes.

Mr. BROWNE. It struck me that the effect of the amendment would be to limit the exercise of any choice on the part of the carrier.

Senator BRYAN. That is probably true.

Mr. BROWNE. It is in that view that I am submitting it.

Mr. WALTER. But any carrier could bring the suit, and often there are 50 defendants in cases; so that your amendment would not cover that.

Mr. BROWNE. No.

Mr. WALTER. There could be 50 separate suits.

Mr. BROWNE. I will leave this suggested amendment with the committee.

On page 24, lines 12, 13, and 14, there is a provision that appeals may be taken to the Supreme Court——

Senator OVERMAN. On page 24?

Mr. BROWNE. I am using the Senate print of the House bill as it passed. I did not know any other could be used.

Senator OVERMAN. If you can get the other print, I should like to have you do so.

Mr. BROWNE. I have the other now, and I will give it to you. It is on page 23, at the bottom line of the House print of the bill as reported:

And such appeals may be taken in like manner as appeals are taken under existing law from the Commerce Court to the Supreme Court.

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The suggestion I make there, in order to make it harmonious with general judicial procedure, is to insert these words in lieu of the words I have read:

And such appeals shall be taken in like manner as appeals are taken under existing law in equity cases.

Then, in that same provision, on page 23, line 24, is the provision that appeals may be taken——

Senator OVERMAN. Are you reading from this print?

Mr. BROWNE. I am reading from the House print.

Senator OVERMAN. I wish you would get the other print.

Mr. BROWNE. I am reading from the House bill as reported, on page 23 of the large print, if I may so designate it.

Senator OVERMAN. Yes.

Mr. BROWNE. On line 24, it says that the aggrieved party is given 60 days after the entry of such final judgment or decree in which to perfect the appeal. Now, the practical suggestion on that is this: These records are very large. Some of them cover thousands of pages. The Supreme Court of the United States, in promulgating its new equity rules, provides by Rule 75 that instead of that entire record there shall be an abstract of the evidence. I make this suggestion in the interest of saving printers' costs. Justice Miller said to me once that he thought records were made up for the benefit of printers. But the inciting cause of that was that the appeals in many of these interstate-commerce cases have brought up such fearful records.

Senator OVERMAN. What amendment do you propose?

Mr. BROWNE. I propose an amendment to provide that 60 days' additional time shall be given in which to submit the abstract, because it would be a physical impossibility to get it up within the time limited. We do not want to stop the running of the appeal; I am not seeking to make delay, but I am simply seeking a practical provision which will comport with the requirement of Rule 75. That would give us an opportunity to perfect the record.

The last suggestion I have to make is on page 24 of the large print, at line 23, where 10 days are given the petitioners in which to designate the court to which pending cases shall be assigned. Inasmuch as the jurisdiction covers the whole United States, I desire to submit to you the wisdom of making it 30 days instead of 10. There can be no harm in giving the greater time, and it would tend to absolute certainty. But 10 days to reach the whole United States is quite too short.

That is all I have to offer.

STATEMENT OF FRANCIS B. JAMES, OF WASHINGTON, D. C., AND CINCINNATI, OHIO.

THE COMMERCE COURT.

Senator OVERMAN. What is your profession?

Mr. JAMES. I make a specialty of interstate-commerce cases. I am a member of the bar, and act as commerce counsel for shipping interests. My clientage is of the West, North, and South, and practically all over the United States. The interests I represent are

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diversified. The shipping interests that I represent are unanimously in favor of the retention of the Commerce Court.

Senator OVERMAN. What do you represent?

Mr. JAMES. In addition to my own private clientage, I want also to speak in behalf of the National Industrial Traffic League. That is an organization made up of 76 subsidiary organizations, largely devoted to the traffic interests of business men, and also some 150 or 200 individual members. In the 76 organizations which are members of the National Industrial Traffic League there are represented at least 100,000 firms, individuals, and corporations who have large shipping interests.

With your honor's permission, I might file here a list of the membership of that organization, so that you may know what interests are represented. I will not take the time to read it.

Senator OVERMAN. Just file it.

(The matter referred to is as follows:)

THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE.

LIST OF MEMBERS—ORGANIZATIONS AND FIRMS.

American Blower Co., P. H. Lynahan, traffic manager, 1400 Russell Street, Detroit, Mich.

American Cotton Oil Co., C. A. Jennings, manager transportation department, 7 South Dearborn Street, Chicago, Ill.

American Hide & Leather Co., H. L. Pratt, in charge of traffic, 92 Cliff Street, New York, N. Y.

American Lumber and Manufacturing Co., M. Riely, manager, traffic department, 209 Ninth Street, Pittsburgh, Pa.

American Radiator Co., H. W. Richards, traffic manager, 820 South Michigan Avenue, Chicago, Ill.

American Sewer Pipe Co., Ross W. Smith, traffic manager, Akron, Ohio.

American Tobacco Co., American Cigar Co., Havana-American Co., Seidenberg & Co., C. S. Keene, traffic manager, 111 Fifth Avenue, New York, N. Y.

Anaconda Copper Mining Co., International Lead Refining Co., International Smelting & Refining Co., M. S. Dean, traffic manager, 1507 McCormick Building, Chicago, Ill.

Anheuser-Busch Brewing Association, R. Muehlberg, traffic manager, St. Louis, Missouri.

Arbuckle Bros., J. L. Carling, traffic manager, Old Slip and Water Street, New York, N. Y.

Associated Jobbers of Los Angeles, F. P. Gregson, traffic manager, 604 Equitable Bank Building, Los Angeles, Cal.

Atlanta Freight Bureau, Harry T. Moore, traffic manager, 403 Rhodes Building, Atlanta, Ga.

Automatic Electric Co., A. E. Campbell, traffic manager, 1001 W. Van Buren Street, Chicago, Ill.

Ball Bros. Glass Manufacturing Co., L. A. Clark, traffic manager, Muncie, Ind.

Barrett Manufacturing Co., J. L. Roberts, general traffic manager, 17 Battery Place, New York, N. Y.

Barrett Manufacturing Co., E. H. Poetter, assistant traffic manager, 1006 First National Bank Building, Chicago, Ill.

Berry Coal Co., A. L., A. L. Berry, president, 20 W. Jackson Boulevard, Chicago, Ill.

Billings Chamber of Commerce, W. A. Selvidge, president, Billings, Mont.

Board of Trade of the City of Chicago, W. M. Hopkins, manager, transportation department, 79 Board of Trade Building, Chicago Ill.

Boston Chamber of Commerce, D. O. Ives, manager, transportation department, Boston, Mass.

Bowser & Co. (Inc.), S. F., J. O. Goff, traffic manager, corner Creighton Avenue and Thomas Street, Ft. Wayne, Ind.

Brooklyn Cooperage Co., R. M. Parker, president, 117 Wall Street, New York, N. Y.

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Buffalo Chamber of Commerce, W. H. Frederick, general traffic manager, 412 Chamber of Commerce, Buffalo, N. Y.
Butler Paper Co., J. W., H. A. Washburn, traffic manager, 223 West Monroe Street, Chicago, Ill.
Cambria Steel Co., Wm. A. Sproull, traffic manager, 1801 Oliver Building, Pittsburgh, Pa.
Carnegie Steel Co., L C. Bihler, traffic manager, Carnegie Building, Pittsburgh, Pa.
Cedar Rapids Commercial Club, John Wunderlich, secretary, Cedar Rapids, Iowa.
Chamber of Commerce of Greensboro, N. C., The. J. C. Forester, secretary and traffic manager, Greensboro, N. C.
Chamber of Commerce of Milwaukee, Geo. A. Schroeder, manager freight bureau, 411 Chamber of Commerce Building, Milwaukee, Wis.
Chamber of Commerce, Luther Ellison, secretary, Monroe, La.
Chamber of Commerce of Pittsburgh, Ira S. Bassett, traffic manager, Keenan Building, Pittsburgh, Pa.
Champion Coated Paper Co. (Champion Fiber Co.), H. T. Ratcliff, traffic manager, Hamilton, Ohio.
Chicago Association of Commerce, H. C. Barlow, traffic director, 10 South La Salle Street, Chicago, Ill.
Cincinnati Chamber of Commerce and Merchants' Exchange, G. M. Freer, manager, traffic department, Cincinnati, Ohio.
Cleveland Chamber of Commerce, D. F. Hurd, traffic commissioner, Chamber of Commerce Building, Cleveland, Ohio.
Clinton Manufacturers & Shippers' Association, Dight Smiley, secretary, Clinton, Iowa.
Colorado Fuel and Iron Co., R. L. Hearon, traffic manager, Denver, Colo.
Colorado Manufacturers' Association, traffic bureau, Denver Chamber of Commerce, F. W. Maxwell, commissioner, 407 Chamber of Commerce Building, Denver, Colo.
Commercial Club of Bloomington, Ill., Jo. S. Joplin, secretary, 417 Greisheim Building, Bloomington, Ill.
Commercial Club of Omaha, J. M. Guild, commissioner, Omaha, Nebr.
Commerce Club of St. Joseph, H. G. Krake, commissioner, St. Joseph, Mo.
Corn Products Refining Co., T. A. Gantt, traffic manager, 17 Battery Place, New York, N. Y.
Crane Co., O. F. Bell, traffic manager, 836 S. Michigan Avenue, Chicago, Ill.
Crane Valve Co., R. W. Miller, traffic manager, Bridgeport, Conn.
Crouse-Hinds Co., S. D. Rice, traffic manager, Syracuse, N. Y.
Crutchfield & Woolfolk, William C. Walters, traffic manager, 2104 Penn Avenue, Pittsburgh, Pa.
Culbertson Bros. Co., L. L. Culbertson, president, 126–128 West Michigan Street, Duluth, Minn.
Dallas Chamber of Commerce, G. S. Maxwell, manager, freight bureau department, 808 Commerce Street, Dallas, Tex.
Dayton Chamber of Commerce, R. M. Robinson, traffic manager, Dayton, Ohio.
Deere & Co., A. R. Ebl, traffic manager, Moline, Ill.
Detroit Board of Commerce, Arthur T. Waterfall, traffic commissioner, 70 Washington Boulevard, Detroit, Mich.
Diamond Crystal Salt Co., Frank Moore, jr., traffic manager, St. Clair, Mich.
Douglas & Co., B. H. O'Meara, traffic manager, Cedar Rapids, Iowa.
East St. Louis Commercial Club, S. E. Wilson, assistant secretary and traffic manager, 240 Arcade Building, East St. Louis, Ill.
Emerson-Brantingham Co., J. H. Miller, traffic manager, Rockford, Ill.
Evansville Manufacturers Association, J. C. Kellar, manager, traffic department, 321 Upper Second Street, Evansville, Ind.
Evens & Howard Fire Brick Co., Charles D. Ward, traffic manager, 920 Market Street, St. Louis, Mo.
Federal Sign System "Electric," Walter Scott, traffic manager, 640 West Lake Street, Chicago, Ill.
Field, R. M., traffic manager, Clarke Bros. & Co., Corning & Co., Peoria, Ill.
Ford Co., The J. B., J. S. Kellie, traffic manager, Wyandotte, Mich.
Fort Pitt Malleable Iron Co., Frank J. Lanahan, president, Pittsburgh, Pa.
Fort Scott Industrial Association, Fort Scott, Kans.
Fort Smith Traffic Bureau, C. D. Mowen, commissioner, 612 First National Bank Building, Fort Smith Ark.

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Fort Worth Freight Bureau, R. O. McCormack, secretary and traffic manager, Fort Worth, Tex.
Galveston Commercial Association, H. H. Haines, traffic manager, Galveston, Tex.
Garland Corporation, S. B. Depuey, traffic manager, 710 Bailey-Farrell Building, Pittsburgh, Pa.
General Electric Co., Maj. A. J. Gifford, manager, transportation department, Schenectady, N. Y.
General Fire Extinguisher Co., C. H. Bell, general traffic manager, Warren, Ohio.
Goemann Grain Co., H. L. Goemann, president and traffic manager, 519 Spitzer Building, Toledo, Ohio.
Gowan-Lenning-Brown Co., George R. Reed, traffic manager, Duluth, Minn.
Grasselli Chemical Co., John Hart, traffic manager, Cleveland, Ohio.
Greater Des Moines Committee (Inc.), E. G. Wylie, freight commissioner, Des Moines, Iowa.
Hardwood Manufacturers' Association of United States, Lewis Doster, secretary, Cincinnati, Ohio.
Heinz Co., H. J., W. H. Robinson, treasurer, Pittsburgh, Pa.
Hinde & Dauch Paper Co., Joe McFadden, traffic manager, Sandusky, Ohio.
Holly Sugar Co., C. A. Johnson, manager, Huntington Beach, Cal.
Houston Business League, C. C. Oden, traffic manager, Houston, Tex.
Illinois Manufacturers' Association, John M. Glenn, secretary, 1227 American Trust Building, Chicago, Ill.
Illinois Steel Co. (Universal Portland Cement Co), F. T. Bentley, traffic manager, 72 West Adams Street, Chicago, Ill.
Indianapolis Chamber of Commerce, J. Keavy, commissioner, freight and traffic division, 407 Chamber of Commerce Building, Indianapolis, Ind.
Inland Steel Co., Chicago, Ill., C. L. Lingo, traffic manager, Indiana Harbor, Ind.
International Harvester Co. of America, F. B. Montgomery, manager, traffic department, 606 South Michigan Avenue, Chicago, Ill.
Iowa-Nebraska Wholesale Grocers' Association, John Mehlhop, jr., secretary-treasurer, Council Bluffs, Iowa.
Jaques Manufacturing Co., R. J. Wallace, traffic manager, 1602 South Canal Street, Chicago, Ill.
Jobbers & Manufacturers' Bureau, Huntington Chamber of Commerce, J. T. Crutchfield, traffic manager, Huntington, W. Va.
Johns-Manville Co., H. W., W. C., Morgenroth, traffic manager, 201 Clybourn Street, Milwaukee, Wis.
Jones & Laughlin Steel Co., F. A. Ogden, general freight agent, Pittsburgh, Pa.
Kansas City Transportation Bureau of the Commercial Club, H. G. Wilson, Transportation Commissioner, 106 Board of Trade Building, Kansas City, Mo.
Kansas Grain Dealers' Association, E. J. Smiley, secretary, Topeka, Kans.
Kelley-How-Thomson Co., F. O. Davison, traffic manager, Duluth, Minn.
Labelle Iron Works, A. P. Oxtoby, traffic manager, Steubenville, Ohio.
Lackawanna Steel Co., W. E. Howes, traffic manager, Buffalo, N. Y.
Lansing Co., T. H. Wallace, traffic manager, Lansing, Mich.
Larkin Co., James Collord, traffic manager, Buffalo, N. Y.
La Salle Commercial Association, J. B. McCaffrey, chairman traffic committee, La Salle, Ill.
Lemp Brewing Co., William J., L. Feickert, traffic manager, Thirteenth and Cherokee Streets, St. Louis, Mo.
Lexington Commercial Club, traffic bureau, C. W. Hayward, traffic manager, Lexington, Ky.
Lincoln Commercial Club, W. S. Whitten, secretary, Lincoln, Nebr.
Lindsay Bros., H. F. Lindsay, traffic manager, 78 Reed Street, Milwaukee, Wis.
Louisville Board of Trade, J. J. Telford, secretary transportation committee, Louisville, Ky.
Louisville Cotton Oil Co., Thomas A. Bohan, traffic manager, Louisville, Ky.
Mallinckrodt Chemical Works, William T. Days, traffic manager, 3600 North Second Street, St. Louis, Mo.
Manufacturers' Association of Erie, Ray Himrod, secretary, 28 Penn Building, Erie, Pa.
Marshall-Wells Hardware Co., C. F. Rowe, traffic manager, Duluth, Minn.
Memphis Freight Bureau, James S. Davant, commissioner, Memphis, Tenn.
Memphis Merchants' Exchange, C. B. Stafford, grain and hay freight commissioner, 1708 Exchange Building, Memphis, Tenn.

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Merchants' Freight Bureau, A. R. Bragg, traffic manager, Little Rock, Ark.
Merchants & Manufacturers' Association, A. E. Beck, traffic manager, Emerson Tower Building, Baltimore, Md.
Merchants & Manufacturers' Association of Milwaukee, A. M. Campbell, traffic secretary, 708 Germania Building, Milwaukee, Wis.
Michigan Manufacturers' Association, H. H. Smith, attorney, 1128 Ford Building, Detroit, Mich.
Milwaukee Tanners' Freight Bureau, A. B. Caswell, manager, 801 North Water Street, Milwaukee, Wis.
Minneapolis Civic & Commerce Association, W. P. Trickett, traffic director, Minneapolis, Minn.
Montgomery Ward & Co. (Inc.), J. Charles Maddison, traffic manager, Chicago Avenue Bridge, Chicago, Ill.
National Association of Automobile Manufacturers (Inc.), James S. Marvin, general traffic manager, 7 East Forty-second Street, New York, N. Y.
National Association of Tanners, Cudworth Beye, executive secretary, 30 North La Salle Street, Chicago, Ill.
National Brake & Electric Co., M. F. Ries, traffic manager, Milwaukee, Wis.
National Carbon Co., A. J. Mitchell, traffic manager, Cleveland, Ohio.
National Cash Register Co., J. W. Cobey, traffic manager, Dayton, Ohio.
National Electric Lamp Association, H. N. Sibbold, traffic manager, 1818 East Forty-fifth Street, Cleveland, Ohio.
National Enameling & Stamping Co., P. M. Hanson, traffic manager, Granite City, Ill.
National Implement & Vehicle Manufacturers' Association of United States, W. J. Evans, freight traffic manager, American Trust Building, Chicago, Ill.
National League of Commission Merchants of the United States, R. S. French, business manager, 202 Franklin Street, New York, N. Y.
National Paint, Oil & Varnish Association, W. H. Crawford, chairman transportation and classification committee, care American Naval Stores Co., Savannah, Ga.
National Petroleum Association, Fred W. Boltz, traffic manager, 1017 Rose Building, Cleveland, Ohio.
National Piano Manufacturers' Association of America, T. C. Moore, traffic manager, 1321 Marquette Building, Chicago, Ill.
National Shoe Wholesalers' Association of the United States, S. W. Campbell, secretary-treasurer, 209 South La Salle Street, Chicago, Ill.
National Supply Co., J. F. Ryan, traffic manager, Toledo, Ohio.
New Orleans Board of Trade, John A. Smith, freight commissioner, New Orleans, La.
Ohio Boxboard Co., T. W. Ross, treasurer and general manager, 1390 East Thirtieth Street, Cleveland, Ohio.
Ohio Shippers' Association, J. W. McCord, secretary, Columbus, Ohio.
Oil Well Supply Co., R. H. Thomson, traffic manager, Pittsburgh, Pa.
Omaha Grain Exchange, F. P. Manchester, secretary, 755 Brandeis Building, Omaha, Nebr.
Otis Steel Co., C. M. Andrus, traffic manager, Cleveland, Ohio.
Pacific Coast Borax Co., H. Dumont, manager, 1550 McCormick Building, Chicago, Ill.
Packard Motor Car Co., C. J. Shaar, traffic manager, Detroit, Mich.
Paepcke-Leicht Lumber Co., W. Williams, traffic manager, 938 West Chicago Avenue, Chicago, Ill.
Parlin & Orendorff Co., W. M. Caves, traffic manager, Canton, Ill.
Patrick & Co., F. A., E. A. Risdon, traffic manager, Duluth, Minn.
Pennsylvania Steel Co. (Maryland Steel Co.), H. M. Newlin, freight agent, Morris Building, Philadelphia, Pa.
Peoria Association of Commerce, Willis J. Evans, secretary, 232 South Jefferson Avenue, Peoria, Ill.
Philadelphia Chamber of Commerce, N. B. Kelly, freight commissioner, the Bourse, Philadelphia, Pa.
Pittsburgh Plate Glass Co., J. M. Belleville, general freight agent, 1614 Frick Building, Pittsburgh, Pa.
Plymouth Cordage Co., William P. Libby, traffic manager, North Plymouth, Mass.
Portland Chamber of Commerce, J. H. Lothrop, manager, Commercial Club Building, Portland, Oreg.
Potteries Selling Co., W. C. Matlack, general manager, 36 East State Street, Trenton, N. J.

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Price & Co., F. H., F. H. Price, 3 South William Street, New York, N. Y.
Quincy Freight Bureau, L. B. Boswell, commissioner, Quincy Ill.
Republic Iron & Steel Co., H. R. Moore, traffic manager, Republic Building, Youngstown, Ohio.
Retail Coal Dealers' Association of the New England States, William A. Clark, president, Northampton, Mass.
Reynolds Tobacco Co., R. J., J. L. Graham, traffic manager, Winston-Salem, N. C.
Richmond Chamber of Commerce, E. S. Goodman, traffic manager, 803 Mutual Building, Richmond, Va.
Rockford Manufacturers and Shippers' Association, C. S. Bather, traffic manager, Rockford Ill.
Rumley Co., M., George M. Gross, traffic manager, Laporte, Ind.
Ryerson, Jos. T., & Son, R. C. Ross traffic manager, Sixteenth and Rockwell Streets, Chicago, Ill.
St. Louis Manufacturers and Exporters' Association, P. M. Hanson, chairman traffic committee, 404 Carlton Building, St. Louis, Mo.
Schlitz Brewing Co., Jos., C. J. Bertschy, traffic manager, Milwaukee, Wis.
Sefton Manufacturing Co., E. C. Wilmore, traffic manager, 1301 West Thirty-fifth Street, Chicago, Ill.
Shreveport Chamber of Commerce, George T. Atkins, jr. traffic manager, Commercial National Bank Building, Shreveport, La.
Simmons Manufacturing Co., F. H. Truax, traffic manager, Kenosha, Wis.
Southern Cotton Oil Co. (Virginia-Carolina Chemical Co.), H. W. B. Glover, traffic manager, 713 Forsyth Building, Atlanta, Ga.
Southern Cypress Manufacturers' Association, E. W. McKay, traffic manager, 1206 Hibernia Building, New Orleans, La.
Southwestern States Portland Cement Co., H. R. Breck, general manager, Box 1083, Dallas, Tex.
Spiegel-May-Stern Co., S. M. Freid, traffic manager, 1061 West Thirty-fifth Street, Chicago, Ill.
Springfield Traffic Bureau of the Jobbers' & Manufacturers' Association, S. C. Bates, secretary and traffic manager, 423 Woodruff Building, Springfield, Mo.
Springfield Traffic Bureau, Guy L. Cory, manager, 909 Fairbanks Building, Springfield, Ohio.
Standard Sanitary Manufacturing Co., J. E. Henry, traffic manager, Pittsburgh, Pa.
Sterling Manufacturers' & Shippers' Association, W. E. Long, traffic manager, Sterling, Ill.
Stone-Ordean-Wells Co., H. A. Earnshaw, traffic manager, Duluth, Minn.
Swift & Co., Albert R. Fay, traffic manager, Union Stock Yards, Chicago, Ill.
Toledo Commerce Club, W. A. Gosline, jr., chairman, transportation committee, Toledo, Ohio.
Toledo Produce Exchange, H. L. Goemann, traffic manager, Toledo, Ohio.
Topeka Traffic Association, H. D. Driscoll, commissioner, 424 New England Building, Topeka, Kans.
Traffic Bureau of Knoxville, Tenn., Charles Kimmich, manager, Knoxville, Tenn.
Traffic Bureau of Nashville, T. M. Henderson, commissioner, 325 Stahlman Building, Nashville, Tenn.
Traffic Bureau, Merchants' Association of New York, J. C. Lincoln, manager, Woolworth Building, 233 Broadway, New York, N. Y.
Traffic Bureau, Commercial Club of Omaha, E. J. McVann, manager, Omaha, Nebr.
Traffic Bureau of the Merchants' Exchange, Charles Rippin, commissioner, 418 Chamber of Commerce, St. Louis, Mo.
Traffic Bureau of the San Francisco Chamber of Commerce, William R. Wheeler, manager, 1204 Merchants' Exchange Building, San Francisco, Cal.
Traffic Bureau of the Sioux City Commercial Club, George T. Bell, commissioner, Sioux City, Iowa.
Traffic Commission of the Commercial Club of Duluth, G. Roy Hall, traffic commissioner, Commercial Club Building, Duluth, Minn.
Transportation Bureau, Seattle Chamber of Commerce, W. A. Mears, manager, Central Building, Seattle, Wash.
Trussed Concrete Steel Co., E. M. Wood, traffic manager, 501 Trussed Concrete Building, Detroit, Mich.
United Boxboard Co., C. C. Furgason, traffic manager, 111 Broadway, New York, N. Y.

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United Cereal Mills, (Ltd.), E. E. Genn, traffic manager, 305 North Michigan Avenue, Chicago, Ill.
United Kansas Portland Cement Co., Kansas City, Mo.
United Shoe Machinery Co., C. B. Baldwin, manager transportation department, 205 Lincoln Street, Boston, Mass.
United States Steel Products Co., A. F. Mack, freight agent, 30 Church Street, New York, N. Y.
Warren Bros. Co., E. Sutcliffe, assistant superintendent refineries, 32 Potter Street, East Cambridge, Mass.
West Virginia Pulp & Paper Co., C. H. Tiffany, traffic manager, 200 Fifth Avenue, New York, N. Y.
Wheeler Elevator Co., Geo. E. Pierce, manager, 710 Chamber of Commerce, Buffalo, N. Y.
Wichita Business Association, Martin E. Casto, traffic commissioner, 201 Barnes Building, Wichita, Kans.
Wisconsin Pulp & Paper Manufacturers, W. D. Hurlbut, traffic manager, 28 East Jackson Boulevard, Chicago, Ill.
Youngstown Sheet & Tube Co., A. C. Graham, traffic manager, 614 Stambaugh Building, Youngstown, Ohio.

Mr. JAMES. The National Industrial Traffic League, composed, as I have said, of this membership, at a meeting held in Buffalo, N. Y., on May 23 and 24, adopted resolutions favoring the continuation of a central court to dispose of this class of cases, jurisdiction of which is now vested in the Commerce Court, upon the ground that it would expedite the disposition of these cases, and also on the ground that it tended toward uniformity. To save time, if I may, I will spread that resolution upon the record, as well as less than a page of the remarks I made before that organization—at their request—in support of the resolution.

Senator OVERMAN. Very well.

(The matter referred to is as follows:)

COMMERCE COURT.

The following resolution was presented for the consideration of the league:

Whereas we are of the opinion the maintenance of a central Feredal Commerce Court seems desirable to the end there may be uniformity and expedition in the handling of cases brought before the courts: Therefore be it

Resolved, That we, the members of the National Industrial Traffic League in convention assembled at Buffalo, N. Y., favor the continuation of a Commerce Court, provided its jurisdiction is strictly limited as defined by the present law and the decisions of the Supreme Court of the United States; be it further

Resolved, That a copy of this resolution be presented to the President of the United States, and also to the chairmen of the proper committees of the House of Representatives and the Senate of the United States.

Mr. JAMES. As I understand Mr. Barlow's resolution, it involves two propositions. The first proposition involved—and I take it from the discussion there is no difference of opinion—is that the present Commerce Court or some central Federal court ought to be continued as created, for the sake of uniformity of decision and dispatch in actions brought to annul orders of the commission. The second proposition is the question of the jurisdiction of such court. The wisdom of continuing or extending its present jurisdiction is a question for you gentlemen to decide, and in which I shall express no opinion. As possibly aiding in determining that, I want to analyze the law as it is.

In the first place, we start with the fundamental proposition, as laid down by Mr. Justice White in the Proctor & Gamble, Eagle White Lead, and Hooker cases, primary jurisdiction is conferred on the Interstate Commerce Commission, both as to law and fact. A complaint is filed with the commission by a shipper against a carrier, complaining either of an unjust or unreasonable rate, or unjust or unreasonable regulation, rule, or practice, or because of unjust or unreasonable discrimination, or because of undue prejudice and disadvantage. The commission does one of two things—it denies the prayer of the petition of the plaintiff and dismisses it, or it sustains the contention of

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the plaintiff and enters an order directing the carrier either to do or abstain from doing something. The Supreme Court has classified those orders into two kinds—where the commission dismisses the complaint it is called a negative order, and where the commission tells the carrier it must abstain from doing something it is called an affirmative order. In reaching a conclusion which calls for the dismissal of a complaint and the entering of a negative order, the commission acts on two propositions—law and fact; it might be a mistake as to one or the other, or both. When the commission enters an affirmative order, telling the carrier to do or not to do something, it may make a mistake of law, or a mistake of fact, or a mistake of both law and fact. Complaints are not confined to those filed by shippers. A carrier may file a complaint under the interstate commerce act, and the commission may dismiss or grant the prayer of the complaint of the carrier. An order entered by the commission against a carrier may vitally affect the right of the shipper. The Supreme Court has not said that the courts have jurisdiction in cases brought by carriers, and have no jurisdiction in cases brought by shippers to annul an order of the commission. On the contrary, as illustrated by the cases, it has said just the reverse. If the commission enters an order against a carrier which vitally affects the rights of the shipper, the query is: May the shipper go into the Commerce Court and seek to annul that order because it affects the rights of a shipper? It may. In the Peary case the commission denied the right to pay elevator allowances which vitally affected the rights of two shippers—Peary and Diffenbaugh. They filed complaints in the United States circuit court before the Commerce Court was created, and it held it had jurisdiction of the complaints of these parties. The cases went to the Supreme Court of the United States, and Mr. Justice Holmes, who wrote the opinions, affirmed the lower court.

We are always aiming for ideal justice, and this second part of the resolution as to jurisdiction clearly is not ideal justice.

Ideal justice frequently breaks down in practice. You are now after practical justice; such scheme of conferring jurisdiction as will work out practical justice as distinguished from ideal justice. You are dealing with a practical question. In my judgment the politic thing to do now is to preserve a central Federal court and not jeopardize it by injecting questions of its jurisdiction.

The resolution offered was, upon montion duly seconded, adopted.

Mr. JAMES. Just to summarize, when the Commerce Court was first organized, and handed down a number of opinions which seemed to be adverse to the shipping interests, there was a storm of indignation on the part of the shipping interests of this country. But when the shipping interests began to reflect that those cases were not only appealable but were in every case appealed to the Supreme Court, and that the Supreme Court has disposed of those cases, and rapidly disposed of them, a calmer feeling came over the shippers. So that while there was at that time a storm of indignation on the part of shippers against the Commerce Court, with a sort of feeling that it was a prorailroad court, as time has gone, and the wrinkles have been straightened out by the Supreme Court decisions, to-day there is a reversal of that judgment, with practical unanimity. As I have been able to gather from my own clientage and from my intimate relationship with the National Industrial Traffic League, what they have done and the resolutions they have adopted, there has been an entire reversal of that feeling, and a feeling that the Commerce Court ought to be retained, and that there ought to be a central Federal court for uniformity and expedition of decisions. Also, because if we revert to the old district courts it is in the power of the railroad corporations practically to select their own jurisdiction in which to file these suits to annul the orders of the commission, and because of the greater inconvenience and great expense that it will entail upon the shippers in going to the courts at these far-distant points, we feel that the Commerce Court ought to be retained.

I thank you.

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Senator OVERMAN. How many cases have been before the Commerce Court since it was organized?

Mr. JAMES. I have not collected the exact number; not to exceed 100, I should say. I have not the exact figures. You probably have had them here.

Senator OVERMAN. It was stated the other day here that there were only 12 or 15.

Mr. JAMES. There have been more cases than that before the Commerce Court. Probably there have been that many decisions. A number of cases have been settled and disposed of. There have been more than 12 cases.

Senator OVERMAN. But how many cases are there now before them?

Mr. JAMES. I have not the exact figures now. I assume that they have been given by some of the others who have appeared before the committee, or at least that they have been given before the House committee.

The CHAIRMAN. We are very much obliged to you.

STATEMENT OF SENATOR THOMAS J. WALSH.

Senator WALSH. Mr. Chairman, I came in to say only a word to attest my interest in the fate of that provision of the bill which affects the Commerce Court. I suppose in all probability the suggestion has been made to you before, but no one can doubt that it has no proper place at all in an appropriation bill. I venture to express the hope that in some way that portion of the bill may go before the Judiciary Committee for consideration, where it properly belongs. It ought to have the consideration of the committee that is particularly charged with measures affecting our judicial system. I do not know what the parliamentary course would be to attain that end, but I think it would be universally agreed that if it were in the shape of a separate measure it would properly go to that committee for consideration, and accordingly that purpose ought not to be defeated by the device of incorporating it in the urgent deficiency appropriation bill.

Senator OVERMAN. I wish to say that we shall have to make an appropriation if the court is to be continued, and that is the way it finds a place here. We have either to abolish the court or to appropriate money for it, one or the other.

Senator WALSH. I assume some provision would have to be made for the court. I can not help but feel that it would be unfortunate to relegate the trial of matters coming from the Interstate Commerce Commission to the district courts of the country. In most instances their calendars are crowded now. So if you do not have a provision in the bill which entitles these causes to be advanced on the calendar they must wait their regular order, and in their regular order they would not even be reached until after the lapse of a very considerable period. Every one of these cases bears a public aspect as well as involving a private controversy.

Senator OVERMAN. Senator, I am very glad you came here to talk about it, because I am very much interested in the matter. It has been stated here that this court has had, since its organization, only 15 cases, and now there are pending only seven cases.

Senator BRYAN. Twelve. Five have been consolidated.

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Senator OVERMAN. Five have been consolidated, so that there are really only seven cases. If I am informed correctly, the court has nothing to do with questions of fact. All they have to do is with questions of law. Will they ever have anything to do to amount to anything?

Senator WALSH. Of course that part of it, Mr. Chairman, really affects only the question of the attendant officers of the court. Some saving might be effected there, of course, by devolving these duties upon another court. I am myself inclined to think that the duties might, with some propriety, be devolved upon the circuit courts of appeals.

Senator OVERMAN. I want to ask you along this line, if we abolish this court ought we not to go further and give the circuit courts of appeals similar jurisdiction to this, and it may be also jurisdiction of all patent cases and relieve the Supreme Court in that respect, and also that it may act as a court of appeals in land cases.

Senator WALSH. We people in the West have for a very long time been desirous of investing the courts with jurisdiction to determine controversies of a grave nature arising under the public-land laws.

Senator OVERMAN. The people of the West are very much interested. The American Bar Association have been before the Judiciary Committee several times asking that there might be a patent court in order that there might be uniformity in patent decisions. I should be in favor of establishing a court of that kind which would have something to do. Since questions of fact are not before this court at all it will have nothing to do. They have nothing to do now. There are clerks sitting around doing nothing. I think there ought to be a court, as suggested by you, for appeals in land cases. You will excuse me for interrupting you.

Senator WALSH. Certainly. I do not feel that I care to argue for or justify the continued existence of the commerce court, but I desire to express the idea that in my judgment it would be very unwise to turn the determination of those cases back to the district courts. If they are not given a preference on the calendar the public interests will be long delayed. If they are, all other interests must stand in abeyance, even the enforcement of the criminal law, unless you give that a precedence; but certainly all private interests must stand in abeyance until these very important railroad cases are determined.

I have a notion, however, that inasmuch as they consider only questions of law the jurisdiction might be safely reposed in the circuit court of appeals. I see no particular difficulty at all about trying questions of fact there, if it should be necessary, either before the courts themselves or by a jury called. It not infrequently happens that you are obliged to call a jury in original actions in the supreme courts. It does not happen very often, but at times it does. I believe if the court is abolished the jurisdiction ought to be vested in the circuit courts of appeal rather than in the district courts.

But there is a further provision in the bill which abolishes the judgeships as well as the court. I presume probably all the members of the committee have given some consideration to the question of the constitutionality of that portion of the act. I have looked into the matter with some degree of care. If you follow it as it is discussed in the authorities, you will find the matter has had the repeated con-

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sideration of the Supreme Court of the State of Tennessee, and there is a very exhaustive consideration of the question in a case reported in Fifty-third Southwestern.

Senator OVERMAN. A Tennessee case?

Senator WALSH. Yes, sir.

Senator BRYAN. Can you give us the title of the case?

Senator WALSH. I thought I had a memorandum of it. I will send it to you. I will say, however, that the question arose over the abolition of certain courts. The contention was made upon one hand that the constitution of the State of Tennessee, which, like the Constitution of the United States, gave to the legislature the power to ordain and establish courts inferior to the supreme court, of necessity gave to the legislature the power to abolish courts, as well as to create them. The contention was likewise made that a judge without a court is an anomaly, and that when you abolish the court you of necessity abolish the judgeship of that court, and that therefore the constitutional provision under which judges were to be elected or appointed during good behavior gave way to the other implied provision which authorizes the legislature to abolish the court.

On the other hand, a very strong dissenting opinion was written by the chief justice and concurred in by another justice, the vote being 3 to 2, in favor of the doctrine that the legislature had the power to abolish courts and thus cut short the tenure of the judges. The language of the text writers is generally against the power. Doubtless it has been called to your attention that one of the very last acts of the John Adams administration established, I think, 13 new circuit judgeships, and appointments were made to fill those places, but when Jefferson came in the act was repealed and the judges deprived of their office. That act was very powerfully denounced by Story, and asserted by Tucker to be in plain violation of the Constitution. It has never been subjected, however, to the test of judicial decision, and so there is no adjudication in the Federal courts on the subject.

The act in question, however, was framed undoubtedly with a view to making whatever provision could be made by the law so that the judges appointed could not be deprived of their offices by the abolition of the court. You will observe that is extremely cautious about the matter and provides that there shall be five circuit judges appointed, and then that those five circuit judges shall be assigned to duty as judges of this Court of Commerce for periods of one, two, three, four, and five years, and so on, and then that other circuit judges shall be appointed there.

Senator OVERMAN. If we can abolish the system, the question in my mind is whether by abolishing the system we abolish the judges. There are two judges now who were members of the Commerce Court. We abolish the system, and they go out into the circuit. We do not abolish the circuit courts, and they are given circuits.

Senator BRYAN. They were appointed originally as circuit judges and designated to serve on the Commerce Court.

Senator WALSH. So when you abolish the court you do not abolish the judgeships at all, and the act before you recognizes that by making an additional provision, by which it attempts to abolish these particular ones. Now, if that is the case, you have just this situation.

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I do not know the exact number, but we will assume that there are 55 districts in the United States and it is deemed desirable to cut those down to 35. Can Congress go on and say that Jones, Smith, Robinson, and so on, designating 35, shall remain judges and the rest shall retire? It would seem to me as though that must necessarily be in plain violation of the Constitution.

Senator OVERMAN. I think that is true.

Senator WALSH. So here you have a certain number of circuit judges. These five men are just as much circuit judges as any other circuit judges in the United States, as it seems to me.

Senator OVERMAN. Suppose we abolished all circuit courts——

Senator WALSH. You have already done that. You have abolished all circuit courts you see, and there remain nothing but district courts and circuit courts of appeal.

Senator OVERMAN. Suppose we abolished our circuit courts of appeal and abolished our entire system as it now stands, except the Supreme Court which we can not touch, how would that affect the judges?

Senator WALSH. That presents the same question. If you abolished all the district courts you would of course be obliged to vest that same jurisdiction in some other court. The authorities go to the extent of holding that under this provision of the Constitution you can not effect the object by abolishing existing courts, giving the same jurisdiction to new courts which you create and appointing new judges of the new courts, because that would be simply a means by which you would abolish the judgeship. It has been held that that is clearly unconstitutional. So you could not, as I think, abolish the circuit courts of appeal and give that jurisdiction to any other court presided over by other judges.

Senator BRYAN. Senator, could we abolish the circuit courts of appeal and leave their jurisdiction to the district courts?

Senator WALSH. The jurisdiction would not be the same, Senator, because the circuit courts of appeal are courts hearing appeals from the district courts.

Senator BRYAN. The Constitution provides for a Supreme Court and such inferior courts as Congress may establish. Suppose Congress wanted to abolish the circuit courts of appeal, in your opinion could that be done so as to legislate out of office the judges of the circuit courts of appeal, and, to carry the illustration further, suppose that that jurisdiction were lodged in the Supreme Court of the United States.

Senator WALSH. Yes; to go back where it was. I started in the investigation of the matter, Senator, with the idea that it could not be done, but I have weakened in that. I am inclined now to think against the view I felt was right and to believe that the power does exist. For instance, if it should transpire that the business of the Supreme Court fell off to such an extent that Congress believed that now they could take care of all appeals the same as they did prior to 1889 when the courts of appeal were established, I should dislike to say that Congress could not then abolish the circuit courts of appeal.

Senator BRYAN. It seems to me that that would put us in a very awkward position, because at one time we might need more courts and at another time we might have no use for them.

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Senator WALSH. You might create a land court and in 50 years from now in all reasonable probability all the duties that would devolve upon that court would have been disposed of by reason of the entire absorption of the public domain.

Senator BRYAN. It seems to me that the difficulty here is that these judges of the Commerce Court were not appointed judges of the Commerce Court; they were appointed circuit judges, designated to serve on the Commerce Court.

Senator WALSH. But I was going to say regardless, however, of the constitutional question, and it is one of the very gravest moment, we all recognize the fundamental principle which gave rise to that constitutional idea. It was that the judges being appointed, and appointed for life, that they should not be removed; that they should be stable and have as high a degree of independence as possible.

Now, I do not like to be misunderstood about this matter. Before I came to the Senate it honored me with incorporating in its proceedings one day an address which I delivered upon the subject of the recall of judges. I took the position there that whenever a State found its public affairs in such a position as prompted it to adopt the principle of the recall, there was no reason anybody could assign that was satisfactory to me at least why any exception should be made in regard to judges; and inasmuch as under our system practically all the States now, I think nine-tenths of them, elect judges the same as we elect the governor, and elect them for specified terms, the same as we elect the governor and all other officers, there is no more reason for refusing to apply the principle of the recall to them than there was for refusing to apply the elective principle to them in the first place. I pointed out that every single argument that ever was advanced against the recall of judges was also advanced against the system of election by the people when it was first proposed.

Senator BRYAN. That would be true undoubtedly, but I think a judge occupies a different position in the estimation of the public from a governor or a legislative officer.

Senator WALSH. I will be glad to send you a copy of that address.

Senator BRYAN. I will be glad to have it.

Senator OVERMAN. It was printed here as a document?

Senator WALSH. Yes, sir.

Senator BRYAN. I can get it here then.

Senator WALSH. I did not have an opportunity to read the proof of the printed document and there are many errors in it. I will send a copy which was printed by the Washington Bar Association. However, that may be regarded, I felt in respect to United States judges that this was an effort to accomplish something which in spirit at least the makers of the Constitution deemed it unwise to attempt, and I thought that part of the bill at least ought not to receive our approval.

Senator OVERMAN. Senator, we have been very glad to hear you. We are very much interested in this matter. It is a very grave question we admit.

(At 12.30 o'clock p. m. the committee adjourned until to-morrow, Thursday, September 25, 1913, at 11 o'clock a. m.)

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THURSDAY, SEPTEMBER 25, 1913.

The subcommittee met at 11 o'clock a. m.

The ACTING CHAIRMAN (Senator Overman). Senator Swanson, you wish to make a statement to the committee and you may proceed.

STATEMENT OF SENATOR CLAUDE A. SWANSON.

MEMORIAL BRIDGE ACROSS POTOMAC RIVER.

Senator SWANSON. Mr. Chairman, I would be very glad if the bill should include an appropriation of $25,000 authorized in the public buildings act passed at the last session of Congress in connection with the creation of a commission of which the President of the United States is chairman, the other members being the Vice President, the Speaker of the House of Representatives, and the chairmen of the Committees on Public Buildings and Grounds of the Senate and House. The commission, as you know, was created for the purpose of investigating and reporting to Congress a suitable design for a memorial bridge across the Potomac River, from the city of Washington to a point at or near the Arlington estate in the State of Virginia. It is very important that this appropriation should be passed at once, as the commission is desirous of organizing and commencing its work. The matter has been delayed a long time. I hope this appropriation will be included, as the commission can not organize until the appropriation is made available.

Senator OVERMAN. It has been estimated for?

Senator SWANSON. The estimate has been made for this appropriation by the Secretary of the Treasury and is submitted as Document No. 173, House of Representatives, Sixty-third Congress, first session, I wish to have it made a part of my remarks.

Senator OVERMAN. We have the document before us and it need not be included.

Senator OVERMAN. Why will it take so much money as $25,000 for the purpose of investigating this matter?

Senator SWANSON. It possibly will not take that amount, but as the bridge is to be a handsome structure connecting the Government park on this side of the Potomac with the Government lands on the other side, I presume the commission are desirous of securing the services of extremely fine architects to make designs.

Senator OVERMAN. You would leave it to the commission?

Senator SWANSON. I would suggest that the amount be left to the commission as it is composed, I am sure, of members who are economically disposed. I do not know that the entire sum will be needed, but it may be necessary to use the whole amount as we progress with the work.

Senator OVERMAN. That is, the amount estimated for?

Senator SWANSON. The amount estimated for.

Senator OVERMAN. I understand that it is recommended by the Committee on Public Buildings and Grounds that the appropriation be made available.

Senator SWANSON. It is; and it was included as an authorization in the last public-buildings act.

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Senator OVERMAN. And this amount fixed in the act?

Senator SWANSON. This amount was fixed in the legislation.

Senator OVERMAN. But it was not appropriated.

Senator SWANSON. It was not appropriated. It was thought it was appropriated, but when the act was examined it was found simply under the authorization features of the act.

Senator OVERMAN. So the Senate and House have already passed a bill authorizing the sum of $25,000 to be used by the commission for this purpose?

Senator SWANSON. They have.

Senator OVERMAN. But the public buildings act only authorized the amount, and by some oversight it was not appropriated. That is correct?

Senator SWANSON. Yes; that is correct.

Senator OVERMAN. That is all you wish to say on that point?

Senator SWANSON. That is all, sir.

Senator OVERMAN. I understand there is another matter that you wish to bring before us, and we will be glad to hear you.

PUBLIC ROAD TO ARLINGTON CEMETERY.

Senator SWANSON. I also desire to urge the committee to include in this appropriation bill an estimate submitted by the Secretary of the Treasury in Document No. 164 for $11,000 to complete the construction of a public road from the southern end of the new Highway Bridge across the Potomac River to the Arlington National Cemetery, and for completing the resurfacing of the roadway between the United States Government experimental farm and the Arlington National Cemetery.

It will be recalled that Congress made an appropriation of $66,000 for the construction of this new highway.

When the estimate was made by the department it was thought that $66,000 would be sufficient for the completion of the work. The work has been in process of construction, and it is found that it will take $11,000 more to complete the roads than was formerly estimated by the War Department. The force is at present at work on the roads, and if the money is not now appropriated it will take a great deal more in the future to complete the road than the $11,000 now asked for. It would be necessary for the force at present working there to leave and return, which would greatly increase the cost of completing the road. The road connects Government property and runs almost entirely through Government property, and it is necessary for the convenience of those who desire access to and egress from Government property.

The matter is very urgent, stated because the force is at present working there, and if compelled to leave and return, the expense to the Government will be very much greater.

Senator OVERMAN. How much has the road been reduced in width?

Senator SWANSON. One road has been reduced in width from 20 feet to 18 feet and the other road from 24 feet to 15 feet. It is imperative that the road should have the original width, as it is near Washington. Owing to the amount of travel on it it would be very inconvenient to have it reduced in width. The work is being

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constructed at the reduced width, but I am sure that it will ultimately be widened as originally designed.

Senator OVERMAN. It is only 15 feet wide in some places and 18 in others?

Senator SWANSON. These are two different roads.

Senator OVERMAN. And you say these roads are on Government property?

Senator SWANSON. They are almost entirely on Government property. It could not be expected that the State of Virginia would make roads running through Government land when the Government pays no tax whatever in Virginia with which to keep up the roads.

Senator OVERMAN. I wish you would write to the Secretary of War and ask him the amount of work that has been done on these roads, and what work has been let out to contract.

Senator SWANSON. This statement here will show that it has been let to contract and that the contract was $11,000 more than was expected on account of culverts, grading, etc. The department urgently recommends, as will be seen from the hearings before the House committee, that this appropriation be made so that the roads can be constructed on the original plan designed and estimated for by the department.

Senator OVERMAN. It seems to me that the road must be almost completed as there was an appropriation of $44,000 and then one of $22,000.

Senator SWANSON. I understand the surfacing has not been made as good as was designed and planned, and the road is not as wide as was designed. It is evident to my mind that it would be a waste of money not to complete the road with proper surfacing and not to give it the width designed, as that would ultimately have to be done at more than double the expense now required. The force is at present there and it could do the work for a great deal less than it could if it is postponed.

As previously stated, the roads have not the surfacing, and unless they have the surfacing, with the amount of travel on them, they will have to be reconstructed within a few years. I have had a great deal of experience in such matters. I had some experience as governor of Virginia when a great many roads were built. It is my experience that roads which are cheaply constructed and not completed and furnished with proper surfacing very quickly deteriorate, and it is a great cost to subsequently repair and fix them. I consider that this appropriation is as urgent as would be the case with a public building which has been estimated for and which was in process of construction but which could not be satisfactorily completed without an additional appropriation.

The bitulithic surfacing of the road has been reduced in order to come within the appropriation, but as the road is near Washington and bitulithic surfacing is necessary in order to protect the road and keep it from rapid deterioration, I think it is of the utmost importance that this appropriation should be given so that the road can be completed as originally designed.

Senator OVERMAN. Do you know that a bitulithic road is the most expensive?

Senator SWANSON. It must be remembered that this road approaches the capital from the south and there will be a great deal of

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travel upon it. It was thought best to construct the best kind of a road for that reason.

I thank the committee very much, and hope they will include this item.

DEPARTMENT OF COMMERCE.

Hon. William C. Redfield, Secretary of the Department of Commerce; George Johannes, disbursing clerk of the Department of Commerce; and E. L. Jones, Deputy Commissioner of Fisheries, appeared.

STATEMENTS OF SECRETARY OF COMMERCE REDFIELD AND FISH COMMISSIONER JONES.

Secretary REDFIELD. Mr. Chairman, it was very kind of you to afford us this opportunity to appear here.

Senator OVERMAN. We are very glad to have you, sir.

Secretary REDFIELD. I should like to say that I am most reluctant even to seem to take a position that in any way reflects upon the Appropriations Committee of the House. I do not want to do that. They have been very kind and most considerate to us in this bill, and I am very far from desiring in any way to go over their heads and ask for anything which it may be considered that they left out. But after speaking to Senator Martin, yourself, and the Commissioner of Fisheries, we wish this morning to bring before you certain matters which we would not have asked for in our estimate had we not thought them essential, and we wish to submit them to your judgment. Dr. Jones, what is the first matter you have to bring forward?

Mr. JONES. There is the question of a fish pathologist, and then there is the item for boats in Alaskan waters.

Senator OVERMAN. Did we not have that up before us in the sundry civil bill, and did not the Senate allow it?

Mr. JONES. No, sir.

Senator OVERMAN. And the House in conference, I thought, turned it down.

Secretary REDFIELD. The matter Dr. Jones refers to is a request for a senior clerk in the Division of Fish Culture and a fish pathologist in the Division of Inquiry. Very briefly I will lay before you a statement as the basis for the necessity for a fish pathologist:

The creation of this position, carrying a salary sufficient to enable the bureau to employ the services of a thoroughly competent man, is highly important. The annual output of the bureau's hatcheries for the fiscal year 1913 was 3,863,593,000, and the product of the various State and private fish-cultural establishments is also great. The ultimate value of these fish after they have reached maturity can not be estimated, but certain fisheries are wholly or largely dependent on the output of the hatcheries. This great food product is imperiled by the inability of the bureau to cope adequately with the diseases which are constantly developing and which tend to increase with the increase in intensity and efficiency of fish culture in other respects. Economy demands that the hatcheries should be operated to their highest capacity, and this is the constant aim of the bureau; but fish, like all other animals raised in captivity, are more

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subject to disease the more closely they are crowded. A full hatchery is more likely to develop trouble than one which is running much below its capacity. Moreover, ponds and tanks which have been in use for a period of years are liable to produce diseases of obscure origin and have to be abandoned or renovated at considerable cost in order to restore them to comparative productivity.

The study of fish diseases is difficult and requires special training not only in biology, but in chemistry and physics, and none but a first-class man would be useful. It is certain that many times his salary could be saved by increasing the efficiency and decreasing the fish mortality at the bureau's stations, and in addition the results of his work would be made available to State and private hatcheries in which there is a large investment, and in the results of whose operations the consumer is vitally interested. The results of the work of the Department of Agriculture in the study of diseases of domestic animals and plants could be duplicated with respect to the fisheries. The bureau, in the past, has done what it could, but it is evident that the time has come when it should have a thoroughly trained and competent specialist for the work.

On this subject I should like simply to add the substance I think of what I said to the House committee. There has been, at least, one case where a disease in the local fish was the cause of or existed side by side with a similar disease which took away the lives of a number of children in the immediate locality. Our view is that the Government service which is charged with the duty of supervising this food product should have a man who can study diseases to which it is subject and deal with them. The estimate is made for $2,500 a year for a fish pathologist, in other words, a fish doctor.

Senator PERKINS. Mr. Secretary, did the case to which you refer occur on the Pacific coast?

Secretary REDFIELD. I think it was in the Northwest. Was it not, Dr. Jones?

Mr. JONES. Yes.

Secretary REDFIELD. In other words, gentlemen, we watch our meat supply closely to avoid disease. We are very careful about tuberculosis in cattle. We watch our vegetable supply and things of that kind with great care. We have a pure food and drug act. But when it comes to the great fish supply of the country there is not a man in the service whose duty it is to look after the diseases of fish.

Senator OVERMAN. To what extent are the fish diseased?

Secretary REDFIELD. Dr. Jones can answer more fully than I can.

Mr. JONES. Every few days that pass we have letters stating that in such a pond or such a stream they have taken out fish that have tumorous growths, and while there are individuals in the bureau who are more or less competent to investigate the subject, their other duties make it impossible for them to go to that place and look it over and see what the conditions are that cause the trouble.

Senator OVERMAN. You have no man you can send?

Mr. JONES. No, sir; we have no man to send. We are very much handicapped for help—I mean efficient help—men who have made a study of physiology and biology. There are a number of them who have done so, but their duties now are too large for them to handle it. They are not, any way, what we call pathologists. They

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could deal to a certain extent with it, but we have no one to send, and it becomes more evident every day that we should have some one.

Senator PERKINS. Do you find these diseases among the salmon?

Mr. JONES. No, sir; but they are in the trout and other fish.

Senator OVERMAN. I do not perceive any disease among the mountain trout in my State.

Mr. JONES. No, sir; I do not know that they have any disease, speaking generally; but in the hatcheries, where there is artificial propagation, it is increasing, and every year demands closer attention. The running of a hatchery at great capacity naturally makes it more likely that some disease will attack that hatchery.

Senator OVERMAN. Have you discovered any fish in a hatchery that were diseased?

Mr. JONES. Yes, sir; we have had several cases this past year.

Senator OVERMAN. What kind of diseases?

Mr. JONES. It is some minute animal matter found usually in the gills, a fungus. We do not know its origin.

Senator OVERMAN. What would be the duties of this pathologist?

Mr. JONES. He would go to the hatcheries where such a case was called to the attention of the bureau, as the Secretary just mentioned.

Secretary REDFIELD. He would study the diseases of fish.

Mr. JONES. I have seen fish in one market that were not marketable, and yet there is not the slightest protection to the people who consume millions of fish.

Senator OVERMAN. The question is whether that was caused by the fish spoiling, or whether it was a disease.

Mr. JONES. I have seen them with a fungus growth in the gills that would not be noticeable to a layman, and yet when such cases are called to our attention we have not the facility or the man to take up the matter. We simply can not do it.

Senator OVERMAN. Is there any other disease among the fish that you have discovered except this fungus growth?

Mr. JONES. Yes, sir; there are a number of diseases of the intestines, worms of different kinds.

Senator OVERMAN. I caught 20 fish in the Yellowstone National Park and every one of them had worms. What caused that?

Mr. JONES. It is partly due to the food they take, and sometimes it is due to the absence of good food. That is just the thing we want to find out so as to be able to state in a scientific way what is the cause. But we have no opportunity for accomplishing such results now. I do not know anything that we need more than a pathologist.

Senator PERKINS. Is the disease contagious?

Mr. JONES. The disease that we refer to is evidently so. They traced the death of several children to it. I do not see why it should not be contagious just as well as diseases of cattle which are transmitted to human beings. I do not see why it should not be the case with fish.

Secretary REDFIELD. We do not know. That is the point, Senator. We want to find out.

Mr. JONES. We want to find out.

Secretary REDFIELD. We have now no means of knowing.

Senator OVERMAN. How do you know that that caused the death of those children?

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Mr. JONES. That is what the physician thought. We are merely quoting eminent authority, M. D.s.

Secretary REDFIELD. We do not know it, but the disease of a gland in the fish in the locality and the death of the children in the locality from a disease of the same gland were coincident. We do not know, but we want to find out. That is the purpose.

Senator OVERMAN. If there is much extent of it I see why it should be done, but not if there are merely sporadic cases here and there; unless, as Senator Perkins suggests, the disease is contagious, or if it should occur to any great extent.

Senator PERKINS. I was engaged for several years in the Alaska fisheries and I never heard of any complaint of that nature. Where did they find these diseased fish?

Mr. JONES. I think, like everything else, it is a matter that has developed as population increases and the demand increases and the hatcheries are run to their full capacity.

Senator OVERMAN. How many fish have you discovered that had this tumorous affection?

Mr. JONES. I have seen quite a number of them. We have in our aquariums; they are sometimes brought to us. I was at a private hatchery in West Virginia and I saw hundreds of them with a pustule about as large as a pin's head. As I said, it would not be noticeable to an ordinary observer. Those fish died there, hundreds of them, and as soon as I opened the gills of some of the dead ones I detected minute pustules, not larger than a pin's head, right on the gills, and it was that which was killing them. A pathologist could detect and eliminate the source of the trouble.

Senator OVERMAN. How would he do it?

Mr. JONES. He would find out what it came from.

Secretary REDFIELD. He would find the cause of the fungus.

Senator OVERMAN. Of course, you do not know, but I would like to know how he would find it out.

Mr. JONES. I detected the cause of that trouble. It came from a form of pollution of the water, but a man with ordinary experience can not find it. It is a long study. I happened to find the source of the pollution in that case.

Senator OVERMAN. How was the water polluted?

Mr. JONES. It was polluted by sewage and offal thrown into the stream.

Senator OVERMAN. That did not stop it?

Mr. JONES. It has not been stopped there. Of course, all that stock is diseased. I told them to get healthy stock and advised them to destroy the fish. That is just one case. In my experience of 20 years I had seen other cases like it, and I knew just where to look. No one except a trained man in that line could detect it.

Secretary REDFIELD. Were you not called in by the State of West Virginia to a hatchery where the entire output of a hatchery in which there were some 40,000 fish was diseased?

Mr. JONES. Yes, sir. About 100,000 fish were lost right at White Sulphur Springs.

Senator PERKINS. They are all fish that go into fresh water to spawn?

Mr. JONES. Yes, sir.

Senator PERKINS. It does not apply to salt-water fish.

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Senator OVERMAN. Does it not come from sulphur? The great lake in the Yellowstone Park has sulphur in it and those fish had worms.

Mr. JONES. We have lost enough fish, I think, to more than pay for the pathologist, because I feel sure that he could rectify those conditions over which we have no control. We use every precaution that is possible. There were two instances this past year which happened right in our own hatchery with every possible care and cleanliness and thoroughness in every way. If we had a pathologist to study that matter, I feel convinced that he would ascertain the cause.

Senator OVERMAN. Do you find fish dying in ponds and creeks?

Mr. JONES. Not generally, but we are losing a lot of fish.

Senator OVERMAN. You have applications for just such a man as you ask for?

Mr. JONES. Yes, sir; lots of them.

Secretary REDFIELD. From States and from individuals?

Mr. JONES. We have to state in answer to such applications that we have no available person to send. We could do as much good in helping the States along the line of fish propagation as anything I know of. They are doing so much artificial propagation now that it makes it a matter of more importance, and its importance is more evident every year.

Senator PERKINS. What States now have fish hatcheries?

Mr. JONES. I could not name the States.

Senator PERKINS. When I was chairman of the Committee on Fisheries we made appropriations for hatcheries in many States.

Senator OVERMAN. We have had fish-hatchery bills certainly ever since 1903.

Secretary REDFIELD. How many States have hatcheries?

Mr. JONES. I could write them down. The question of a pathologist is not a question only of help to the bureau but of help to the public and the States.

Senator PERKINS. I think there is no appropriation made by the Government from which the people get so much benefit as they do from the fish hatcheries.

Secretary REDFIELD. On the coast of New England, now, which is the sole hope of the lobster industry, we are planting something like 200,000,000 lobsters a year.

Senator PERKINS. And sending them out?

Secretary REDFIELD. And sending them out now in large quantities.

Senator OVERMAN. We have established a diamond-back terrapin farm in North Carolina.

Mr. JONES. Yes, sir.

Secretary REDFIELD. Senator Overman, your State is to be congratulated as one State which, through the intelligent efforts of its authorities, has very largely increased, and has continuously increased, its supply of fish. It is remarkable.

Senator OVERMAN. We have done a great work there. That diamond-back terrapin farm produced a revenue last year of $900, I think, and now from the example shown by the Government the people are beginning to establish their own little diamond-back terrapin farms, and, just like a chicken farm, it brings in good revenue.

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Secretary REDFIELD. The State of Maine derives an enormous revenue from those who go into that State every year and fish.

Mr. JONES. And from lobsters.

Secretary REDFIELD. They have a number of hatcheries where they raise fish, with the result that the people go from many States to Maine and the revenue the State derives is very large. They run their own hatcheries. I am sure if the State authorities of the different States were to be consulted they would say that there was nothing which would help them more than a man whose business it would be to discover the causes of disease. For example, the State authorities write to us that fish are dying in a certain lake and complaining that a company is destroying them by emptying certain things in the water, and the company argue it is something else. We could help them right in that line, because a pathologist can tell what bacteria is the source of the trouble. But we are not in a position to help them. We have to write back that we have no available man to send out as a pathologist, and we have not one.

Senator OVERMAN. Did you find any disease among sea fish?

Mr. JONES. Not so much. There is in that case great freedom for travel and no element of contamination.

Senator OVERMAN. Only among fresh-water fish?

Mr. JONES. Mostly. Of course diseased fish may be found near the coast at times. But, Mr. Chairman, you might like to know, regarding lobsters, to which the Secretary referred a moment ago, that they are taking 20,000 pounds of lobsters from New England, and they are on the increase, and the fishermen up there say it is absolutely due to the efforts of the bureau. It is very gratifying to know that it is entirely due to propagation and saving the eggs from the females.

Secretary REDFIELD. I can speak of that with some knowledge because I have been a resident there in the summer season for 13 years. Six or eight years ago that industry stood at the point of extinction. Now, I have seen in one pond belonging to the Fish Bureau 18,000 female lobsters, all berried as they say, all with the eggs, and the vast percentage of those eggs hatched into living creatures that otherwise would be destroyed. This is a wonderful work, and it has, I think, an important bearing not only upon the food supply of the New England coast but of the whole country.

There is a point of conscience in what Dr. Jones is saying. We are subject to criticism because we have not a fish pathologist. They say, "Why, you are dealing with this great source of food supply in an ignorant way. Do you not know that it is your business to know?" We could come back to them and say, "We presented this matter to Congress, and Congress has refused," but that is not courteous. Here we are dealing with a food supply which is increasing in importance, and we have not a single man whose business it is to find out the trouble. That is why we are here, Senator.

Senator OVERMAN. We want to do what is best for the people, and at the same time we want to save the revenue of the Government as much as possible.

Senator SWANSON. Mr. Chairman, I should like to say, in addition to what the Secretary and Mr. Jones have said, that the benefit from this small appropriation would be, it seems to me, incalculable. Virginia has a very large fish industry and is very much interested

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in this matter. The time has come when the fish industry must be treated scientifically. Here the Agricultural Department in its selection of seeds and in its treatment of cattle diseases has doubled and trebled the returns from agricultural products. We believe that if the same scientific treatment were given to fish the food supply would be very greatly increased. Coming from Virginia, with a large fish industry, I desire to add my request that the appropriation be granted and that the department be dealt with liberally.

Senator PERKINS. In addition to a pathologist, you also ask for another clerk. Do you deem that necessary?

Senator OVERMAN. Would you rather have a clerk or a pathologist?

Mr. JONES. We would rather have a fish pathologist.

Secretary REDFIELD. A hundred times. Forget the clerk if you can not give us both.

Senator OVERMAN. You are ready to compromise on that?

Secretary REDFIELD. The one is for the saving of human life, from our point of view, and the other is a matter of convenience in doing the work.

Mr. JONES. I have had the argument brought up to me a dozen times, "Why is it that the Bureau of Animal Industry has doctors to send anywhere in the United States and you have not one?" There is the question which is put up to us. It is just as important a bureau as the Bureau of Biology and why do you not do it?

Senator OVERMAN. There can be no question of the fact that fish constitutes a very important food for the people.

Senator SWANSON. Senator Overman's State, like Virginia, is greatly interested in the development of the fish industry. It is a meat industry of Virginia and North Carolina.

PROTECTION OF FISHERIES AND FUR-BEARING ANIMALS OF ALASKA.

Secretary REDFIELD. May I pass to the next item?

Senator OVERMAN. Certainly.

Secretary REDFIELD. Here is the estimate:

For construction or purchase of vessels and boats in connection with the enforcement of the laws and regulations for the protection of the fisheries and fur-bearing animals of Alaska, including one seagoing vessel, one light-draft tug, and six rapid motor boats, $100,000.

For additional employees, Alaska fisheries service, $8,500.

The estimate speaks for itself, but perhaps I may add a few words which will show the situation there, which we regard as quite intolerable. Senator Overman, if you were charged with the duty under the law to supervise the fishing interests of Alaska and were our inspector there under orders to supervise a cannery, this is the situation in which you would find yourself. When you arrived at your post of duty——

Senator OVERMAN. Let me ask you one question before you proceed. Has this been estimated for in the legislative, executive, and judicial appropriation bill or in the sundry civil appropriation bill or any other bill of that kind?

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Secretary REDFIELD. No.

Senator OVERMAN. I want to know why this comes in as an urgent deficiency. This is an urgent deficiency appropriation bill.

Secretary REDFIELD. The nature of the circumstances is its only excuse. The situation is such there as from our point of view to be extremely emergent, and the deficiency of the ability to carry out the law which we are charged to carry out is patent in the facts. It is, of course, for you gentlemen to say whether this must be postponed, but we should not be under the law carrying out our duty unless we brought it before you. There are certain acts, an act to prohibit aliens from fishing in the waters of Alaska, an act for the protection and regulation of the fisheries of Alaska, which we can not carry out. They are not being carried out as they should be, and they can not be carried out for physical reasons. That is the emergency. Our consciences are clear when we have laid the situation before you.

Senator OVERMAN. I know it is an emergency, but the question is whether it belongs on an urgent deficiency appropriation bill. It is something that Congress has not appropriated for when estimated for before.

Secretary REDFIELD. I do not know the reason why it was left out in the House, but it would defer this service for at least a year in a situation which I frankly say we shall all agree is scandalous. I think it is no less, Senator.

Senator OVERMAN. I want to say to you that the Secretary of the Interior and the Secretary of the Treasury and others have all been here. I do not think some of them exactly understand what this bill is for. I know you do.

Secretary REDFIELD. I do. I understand.

Senator OVERMAN. Because you were once a Member of the House, and you know the purposes of the bill.

Secretary REDFIELD. Certainly.

Senator OVERMAN. We have had to leave out a good many items that Secretaries have been here and asked for as though this were an ordinary appropriation bill. It is not such a bill. It is to take care of urgent deficiencies.

Secretary REDFIELD. That is why we present this to you. We are going to be bound by your decision, yet it is a matter of conscience to put it up to you to decide. If you decide that this item is not an urgent deficiency we must be content. We would hardly be justified in not asking for it, for we stand in this position as public servants. You gentlemen of Congress have instructed us to do certain work. We can not do it. Now, we come to you and say such and such are the reasons, and then if we are not provided, in your judgment, with the means at this time our conscience is clear. But it would not be clear otherwise, because we would do wrong to conceal the facts. The facts are that these laws can not be carried out as they are meant to be and as I think they should be supposed to be carried out.

NECESSITY FOR ADDITIONAL PERSONNEL AND VESSEL SERVICE IN ALASKA FISHERIES SERVICE.

Section 14 of the act of June 26, 1906, entitled "An act for the protection and regulation of the fisheries of Alaska," and section 5 of the act of June 14, 1906, entitled "An act to prohibit aliens from

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fishing in the waters of Alaska," make it the duty of the Secretary of Commerce to enforce the provisions of those acts. Only four fishery agents are provided by law for this purpose, and it is a physical impossibility to enforce the laws and regulations covering the fisheries of Alaska along the 15,000 miles or more of coast without more help and better facilities for transportation.

There are no railroads, steamship routes, or regular means for travel where most of the canneries and fisheries are located, and the Government agents are compelled to travel on the cannery boats owned by the firms or persons operating the canneries and fisheries under inspection by the agent to see that the law is being properly observed. The department is therefore compelled to ask favors from those firms or persons, and this necessary action has embarrassed the department and subjected it to adverse criticism.

In order to remove these objectionable conditions and provide for an efficient administration of the Alaska fisheries service it will be necessary to supply that service with a number of vessels.

Recently the department purchased a small steamer, the *Osprey*, for use in southeast Alaska. The *Osprey* is a vessel of 40 tons, with a speed or 8 or 9 knots, and is suitable for use in the inside passages of southeast Alaska. In addition to the *Osprey* the following vessels are urgently required:

(1) A small but good seagoing vessel suitable for use anywhere in Alaska, able to make trips on the outside from Seattle to Yakutat, Prince William Sound, Cook Inlet, Kodiak Island, Chignik, Unalaska, and elsewhere. This vessel would be used for carrying the agents to the various general regions mentioned above, for landing shore parties at points not to be reached by smaller vessels when special investigations or inspections are to be made, for performing patrol duty in connection with the alien fishing law, and for other purposes.

(2) One tug of light draft for use in the Bristol Bay region, capable of going to all the canneries and fisheries of that region and of making cruises in favorable weather. This vessel would make Unalaska her station during winter and would in spring carry the agents to the Bristol Bay region, and during the summer from place to place in that section, returning them in fall to Unalaska, whence they could proceed on other vessels. This vessel would also be used for carrying fish refuse from the Bristol Bay canneries to the Pribilof Islands for feeding the fox herds and for other service connected with the seal islands, which are now entirely without steamer connection with the mainland or with one another between early fall and late spring.

(3) Three launches for use in central Alaska—one in the Afognak reservation and vicinity, one in Cook Inlet, and one about Prince William Sound. These would cost $3,000 each.

(4) Three similar boats for use in southeast Alaska, costing about $2,500 each.

These launches would have to be rapid motor boats to enable the agents to move quickly from one trap or other fishery to another and to apprehend violators before they could escape or remove the evidence of violation.

The best information available shows that the vessels and boats indicated would cost about $100,000.

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The present personnel should be increased by at least five fisheries agents. If this number can be provided it will be possible to reorganize the field force and put it on a fairly satisfactory basis. It is the intention to use these vessels and employees in connection with the fur-bearing animal branch of the service during the spring, late fall, and winter, when the fisheries are suspended.

Just for a few moments, for I do not want to go into a long analysis, let me state that this is the situation, gentlemen of the committee, which we find ourselves in: If I were to appoint you to the post of fish warden in Alaska, you would be under the necessity of investigating a fish hatchery operated 250 or 350 miles away from you. There is no means of transit, there are no regular passenger lines, and no vessels of any kind are provided for the Government service. Consequently you would call upon the hatchery and inform them that you were about to investigate them and that you were about to proceed, and please send your boat and take us over to investigate you. That is the only means we have ever had, namely, of giving notice in advance to the people whom we were supposed to supervise, calling upon them to furnish the means of transit and waiting for them until they got ready to come. Not any of us would tolerate that for a single moment if it were near by, but it has been tolerated up there. The Delegate from Alaska, the grand jury up there, the platform of the Democratic Party in Alaska, the Legislature of Alaska, the governor of Alaska, have all pointed to this condition. It is an intolerable one. At the meeting of the Socialist Party in Juneau not long ago they said that our inspectors were too close with the hatcheries or the canneries. They are. They have to be. The only means they have of getting about to do their work is to borrow the boats belonging to the men whom they are to supervise.

I will add to that the fact that we are given the magnificent force of four men, without any means of transit on land or sea, to cover 15,000 miles of coast, involving an industry one single phase of which—the salmon industry—sells $15,000,000 worth of goods a year. There is our position as servants of Congress. That is all. That is the story, gentlemen.

Senator OVERMAN. It is very interesting.

Senator PERKINS. It is my recollection, Mr. Chairman, that when we had the sundry civil appropriation bill up at the last session we gave them all they asked for.

Secretary REDFIELD. I think that is true, Senator, but I found this condition existing. Whether it was known or not I am not in a position to say. Those are the facts.

Senator PERKINS. I have been a lifelong friend of the fishing industry in Alaska.

Secretary REDFIELD. I know you have.

Mr. JONES. Mr. Chairman, may I cite one instance? I think it was Dr. Ward, formerly with the Bureau of Fisheries, but now a professor in a university, who went to Alaska to do some biological work. Evidently somebody knew of his connection with the bureau. He asked for a boat, the only means of getting up to one of these canneries and private hatcheries. They said, "Oh, no; we can not take you on this trip," and gave him some very poor excuse. They said, "We will be back for you in a week." He was not in the

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employment of the Government. He went up there and found the grossest violations. We have just gotten this report from him. There were violations in every conceivable way—Sunday fishing, aliens fishing, a terrible waste of fish, representing thousands of dollars. Our warden tried to get up there, but they made him wait for a week until they had time to go up to this hatchery, tip them off, and then they came back to get him.

Secretary REDFIELD. That is why we are troubling you with our emergency. It is because, as a matter of conscience, we can not with those facts keep them over until next year without bringing them to your knowledge.

Senator OVERMAN. There was a delay of a week so that they might get things in order?

Mr. JONES. They would not let our man go over there until they were ready for him.

Senator OVERMAN. It is a meritorious proposition, but the question is whether the appropriation can go on this bill.

Secretary REDFIELD. That is a question we can not decide, but those are the facts.

This same item covers the fur wardens. I want you to see the situation up there in Alaska, because it is a hard one to deal with. I think it is four men we have to cover half a million square miles of territory on land. Our department is charged with the care of fur-bearing animals on the mainland of Alaska. We have four men, and the area, as I said, is half a million square miles, a very large percentage of this is occupied by fur-bearing animals of one kind and another. We have no means of stopping the unlawful killing of these creatures. The best evidence of that is that only two days ago I authorized the confiscation of 1,286 skins of animals unlawfully killed. We can not stop that killing. They killed those animals and brought them in, and but for the vigilance of one of the four or two of the four wardens they would have gotten away with them. They had gotten them sold twice. They had gone through the hands of two dealers when we happened to catch them; and now that we have got the skins we will sell them on Government account. But you can see how hopelessly inadequate the service is. To be candid with you, Senators, it is a farce, and we do not like to have it remain that way.

We do not want a large amount of money. Give us only the means to get our men about, and 12 men for the whole Territory, and we will do the work. Our inspectors stand helpless and see the law violated within 3 miles of them with no means of getting there except by going and borrowing a boat, and the fellow who is violating the law says, "Wait a week and we will come back and get you."

Mr. JONES. A gentleman who has been in Alaska for 30 years, Capt. Simmons, says if 25 wardens of the right class of men were in Alaska it would mean a gain of a million dollars profit every year. So you see it is a question of economy.

Senator OVERMAN. It is false economy not to appropriate for it.

Secretary REDFIELD. It is a case where the wise expenditure of money on a modest scale is the truest economy.

Senator OVERMAN. You have made a good showing. It is only a question of putting the item on the urgent deficiency bill, and that we will have to consider.

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DAILY CONSULAR REPORTS.

Secretary REDFIELD. The next matter I should like to call your attention to is page 23 of the estimates, which we do regard as an urgent deficiency of the most practical kind. If passed as requested it will authorize us to print, at a cost of $12,000, not to exceed 10,000 additional copies of the Daily Consular Reports, 30,000 in all. That is the daily publication of the reports of our consuls and representatives abroad, the edition of which is now limited to 20,000 copies; but 20,000 is not enough. There are now on file, or were on file, applications from 2,000 firms who could not get these reports, and who are entitled to them. We have culled the list all we possibly could, but we are now, or were a few weeks ago, 1,200 firms behind. A Member of Congress from Albany has presented to me a list of well-known business houses that want these reports, which are intended for them. A gentleman from Troy has presented others, and we simply can not furnish them.

Senator PERKINS. Why did you discontinue publishing the monthly consular reports?

Secretary REDFIELD. That was done two years ago, Senator. I am not certain as to why it was done.

Mr. JOHANNES. The information came out so late that it was hardly of much use any more.

Secretary REDFIELD. I think there was a trial made of a weekly publication, but it was very unsatisfactory, because a great many opportunities come out for business estimates that require telegraphic answer.

Senator PERKINS. They were very valuable.

Secretary REDFIELD. Yes; they were very valuable. When I was in business I used them every day. I have given up my own copy. The demand for these publications is so great from the business houses for whom they are intended that I have personally given up a copy of my own and have had all my officers do so. Here we are publishing a magazine intended for the daily use of business men, the bureau being created for that purpose, and doing that work very efficiently, and we are limited to 20,000 copies.

Senator OVERMAN. How much is appropriated for that purpose now?

Mr. JOHANNES. It comes out of the regular printing allotment, Senator.

Senator OVERMAN. I mean how much have you allotted?

Mr. JOHANNES. We allot about $60,000 for the 20,000 daily edition.

Senator OVERMAN. Is it done at the Government Printing Office?

Mr. JOHANNES. Yes, sir.

Secretary REDFIELD. $12,000 is asked for this purpose for the balance of this year.

Senator OVERMAN. For additional copies?

Secretary REDFIELD. For additional copies—an additional edition of 10,000 copies; that is, not to exceed 10,000. We will print what we have a demand for; but as the matter now stands we are actually unable to fill our orders.

Senator OVERMAN. We have appropriated $525,000 heretofore for the printing for the Department of Commerce and Labor. Of course

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you have allotted some of that amount to the bureaus of the Department of Labor?

Secretary REDFIELD. Yes, sir; $84,000.

Mr. JOHANNES. In addition to that, the law does not authorize us to print more than 20,000 copies; and of course the finances would not permit us if the law did.

Secretary REDFIELD. That is a thing which we regard as of importance. There is no excuse for printing them at all, it seems to us, unless we print enough.

Senator PERKINS. Only two months have passed since the present appropriation has been available?

Secretary REDFIELD. Yes.

Senator PERKINS. You have no deficiency as yet?

Secretary REDFIELD. We can not print more than 20,000 copies, you see. We are limited as to total by the law.

Senator OVERMAN. Suppose we do not make any further appropriation and allow you to print to the limit?

Secretary REDFIELD. Then we would simply have to use up the appropriation before the year was over; that is all.

Senator OVERMAN. Then that would be a deficiency. I just state that in order to show you the situation.

Secretary REDFIELD. Yes; I see the point. You see, it is a practical situation that we are up against. We have now an actual demand, from the people to whom the law intends these to be given out, for a larger number than we have means to furnish.

Senator PERKINS. As a matter of fact, there is no deficiency as yet in the fund?

Secretary REDFIELD. Not in the sense of which you speak; no. If you authorize us to print more than 20,000, we can go ahead and print them, I think.

Senator OVERMAN. How many are demanded, according to your estimate? You now have 20,000. How many more thousands would be sufficient?

Secretary REDFIELD. At the moment? I should say at the moment approximately 24,000 to 25,000 are required, and the demand is constantly increasing. You see, our export trade is growing immensely. It is growing by great leaps. It grew two hundred-odd millions last year; and as that grows the demand for these things grows, normally.

Very candidly, I am considering an entirely different arrangement for next year. For the year following the 30th of June, 1914, I am considering whether we should not print a limited edition for official use, for the use of libraries and official bodies throughout the country, and then have an unlimited edition authorized for sale. That seems to me, as far as I have been able to give it thought, to be the ideal thing, but that is not what we are facing now. We are facing now an actual demand from the business houses.

Senator OVERMAN. Have you the language of that statute?

Mr. JOHANNES. It is quoted here at Thirty-sixth Statues, page 821.

Senator OVERMAN. If it is quoted, just read it.

Mr. JOHANNES. I mean, the citation is given. This act merely authorizes the Secretary of Commerce and Labor to print an edition not to exceed 20,000 copies of any one issue of the Daily Consular and Trade Reports.

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Senator OVERMAN. An additional number?

Mr. JOHANNES. No; not to exceed 20,000 of any one issue. Then it provides that the usual number shall not be printed. That gives us the entire distribution of them. I do not think the Capitol has any.

Senator OVERMAN. Read that again, please.

Mr. JOHANNES (reading):

That the Secretary of Commerce and Labor be, and he is hereby, authorized to have printed for distribution by the Department of Commerce and Labor an edition of daily consular reports not to exceed twenty thousand copies in any one issue.

Senator OVERMAN. What does that mean—the addition of 20,000 copies? How many did you print before that?

Mr. JOHANNES. This is an edition.

Senator OVERMAN. Oh; I thought you said an "addition."

Mr. JOHANNES. No; "edition."

Senator OVERMAN. That is very plain.

Mr. JOHANNES. It limits it absolutely to 20,000 copies.

Secretary REDFIELD. We have gone over the mailing list repeatedly in order to cut it down. We have sent out letters to people to ask if they wanted the publication. I had two copies for two different departments in my office, in my business. I gave up one of them. I had one that came to my desk in the office and I gave it up. They are like gold leaf; they are precious.

Senator OVERMAN. I get a copy which I should be very glad to let some manufacturer have.

Secretary REDFIELD. We should be thankful to have word that it is not wanted.

Senator OVERMAN. I have no doubt that if you will write to Congressmen a good many of them will probably let you have their copies. I read the reports sometimes, when I have nothing else to do, but I can not read them now. It is impossible.

Senator REDFIELD. For the Members of Congress alone we are about 1,500 copies short of those that they want for their constituents. We can not supply them.

If you can regard that as an urgent deficiency, we shall be very grateful to you.

STORAGE OF PLATES FOR COAST AND GEODETIC SURVEY.

The matter that I next wish to take up is the Coast and Geodetic Survey, on page 26 of the estimates. There are two matters there which seem to us very urgent. I refer to the $2,400 item and the $4,000 item—the second and the third items.

The situation is such, as I said to the House committee, that you gentlemen can step six or eight hundred feet across the street here and see the conditions yonder for yourselves, not one of you would allow them to continue for a moment. There are most invaluable records, the original plates of the charts of the Government from the beginning, on which the whole shore line of the entire national frontier is based for its historical records, stored in a wooden shed with wooden racks. They are called upon constantly in connection with land titles. Only a few day sago we had out the charts showing the lines of New York Harbor as they were in 1775, all the old and

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all the new ones. These plates are there. There they stand, in wooden racks, in a little building that is not fireproof. We are using, as I said to the House committee, Ben Butler's old stable. It is all we have to use. For $6,400 we can put those plates out of danger.

I do not like a thing of that kind on my conscience. There it is. Anybody can see it. You can go down in the yard and look at these little sheds, and go in and see these aluminum and copper engraved plates. In my factory I would not allow that to continue longer than I could borrow money to stop it; and I always think of public opinion in such matters.

Senator OVERMAN. How about this great big building that we have authorized up here, to cover a whole square, for the Government archives, and so on? Why could not these things be transferred to that building?

Secretary REDFIELD. These are large engraved plates that are used in the printing office, immediately adjoining. Our printing presses are there, our lithographic presses, and these are the original plates that are used in those presses. They must be within handy distance. They are worse than archives. They go back of the archives. These are the things from which the original archives were printed. Corrections are being made constantly. They are being used always, as Mr. Johannes says.

I am sure there is not the faintest desire on anybody's part to refuse $6,400 to make that straight. I have personally been down there and looked that over, and I can assure you that it is a thing which all of us would be sorry about if we had a fire there. We have had two fires in that building within a few years.

Senator OVERMAN. There comes up again the question of an urgent deficiency.

Secretary REDFIELD. Yes; that is a question for you to settle, Senator, as to what is urgent. If we had a fire the 1st of October in that building, I think we would all think it was urgent.

Senator OVERMAN. A great many things are urgent that are not deficiencies.

Mr. JOHANNES. Senator, this matter was presented to Congress before. It was in the estimates last year.

Secretary REDFIELD. It has been presented often, and it is close by.

PRINTING OF CHARTS.

The next item is $10,000 additional for the material and labor for preparing the charts which we are charged by law to make and sell, the money for which comes back into the Treasury. We are very closely approaching, if we have not already passed, the point where the funds we have are not sufficient to print enough charts to sell. You see, if we could sell them and turn the receipts back into our own fund, we would not require this additional money; but as we make these charts of the coasts and rivers and lakes we sell them, and the money goes back into the Treasury through another account. Now, we are in a position where we have either got to have more money to make more charts or we ought to be able to use the money we receive for the charts that we sell. That we do not ask, however, as the House committee does not like it. I do not, either. But we asked for $60,000 last year and we got $50,000. That $60,000 was

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no more than enough. This is an emergency deficiency, from our point of view. It is a shortage of appropriation to do work we are charged by law with doing. The demand is increasing rapidly. Ships are being built very rapidly, calling for charts, and we have not the means to furnish them.

It would seem to me, Senator Overman, that there can be no question as to the urgency of that deficiency. The money appropriated last year was too little.

Senator OVERMAN. In the fiscal year 1912 the net amount received for charts appears to have been $12,000.

Mr. JOHANNES. Of course this total appropriation is not for chart printing alone. It is for all the general expenses.

Secretary REDFIELD. It is that out of which the chart printing has to come.

Mr. JOHANNES. Then, of course, a lot of charts, all the Government charts, are furnished free. The Coast Survey has to furnish them to the Government, but they are furnished free.

Secretary REDFIELD. We furnish them to the Navy Department and all the other services of the Government without any charge, out of this appropriation.

Senator OVERMAN. Is there any duplication of charts, Mr. Johannes?

Mr. JOHANNES. I do not think so.

Secretary REDFIELD. I am pretty familiar with the use of charts, and I should certainly say that there might be said to be some, whereas, as a matter of fact, there is none. That is to say, there are local and general charts. For instance, take the coast of Maine, with which I am very familiar. There is a chart covering the entire coast from the Canadian line to Massachusetts Bay. Then there is a chart covering that coast in four sections. Then there is an individual chart for every bay.

Senator OVERMAN. Are not those charts prepared by the Navy Department, also?

Secretary REDFIELD. No: we furnish the Navy Department all they use. They all come from us.

Senator OVERMAN. I think the Cabinet could do no greater service to the Government than to go into this matter of duplication of work.

Secretary REDFIELD. I agree with you, with all my heart.

Senator OVERMAN. I will give you an example. There was an estimate presented here by the Bureau of Labor for a large sum of money for printing bulletins. They were bulletins of State laws in regard to workmen's compensation. I am satisfied that the same matter was printed for a committee here, in a volume, giving the laws of all the States and foreign countries. Now they are doing the very same thing that has been done before.

I know your department and the office of the Secretary of State print reports which conflict. I tried to strike that out before, and had a fight over it. I wanted to give your department all the work in the office of the Secretary of State relating to foreign trade, and I think it ought to be done. Mr. Knox insisted on having certain work done in his office in regard to our foreign commerce, but it ought to be done by your department. They have a large amount of

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money appropriated for the State Department, and you have a large amount, and you duplicate in all these respects.

Secretary REDFIELD. That is all wrong, of course.

Senator OVERMAN. The matter ought to be taken up by the Cabinet and discussed, so as to see if you can not stop this duplicating. It would save a million dollars if you could stop the duplication of work.

Secretary REDFIELD. I do not think the Department of State will raise any question now as to the printing of commercial statistics on their part. I think they will be very well satisfied to have us do it.

Senator OVERMAN. I think it ought to be done under one department, and I think the Department of Commerce is the one to do it. We had a big fight here before the committee and in the House on that line.

REIMBURSEMENT OF OFFICERS OF COAST AND GEODETIC SURVEY.

Secretary REDFIELD. I want to speak of one little matter about the reimbursement of officers of the Coast and Geodetic Survey. This is the matter, gentlemen, about which I have the most feeling of any in the whole bill. It really does appeal to one's feelings.

Senator OVERMAN. Is that estimated here?

Secretary REDFIELD. No: it is not an estimate. It is an authority. It is not an estimate at all. It does not require any money whatever. The total amount involved is $500, payable out of the existing appropriations. This is the story: I want to tell you the story that brought this matter forcibly to my attention.

The steamship *Curacoa* ran on an uncharted rock off the Alaskan coast in June. She had a wireless outfit, and fortunately got hold of the Coast Survey steamer *Gedney*, which got there just 15 minutes before the *Curacoa* sank, took off the officers and crew, carried them to the nearest port, and set them on shore.

We all think that is a laudable thing to do. But why should the captain of the United States vessel that did that work be obliged to pay out of his own pocket for the food furnished those shipwrecked passengers and crew, and the clothing supplied to them? It annoys me that when the United States of America sends its own vessels to the aid of the suffering it should force the captain, out of his own meager salary, to pay for the food and clothing necessary. I do not think any of us want that to continue. It seems to me perfectly intolerable.

The position taken is this: "Let these men bring their claim against the United States Government, and that claim will in due course be considered and an award made." I have no doubt that is true. But the sailor, as some of these men were—not the officer, but the sailor—who, out of his meager means, gives a suit of clothes, or out of his mess divides his food with a shipwrecked man dragged from the water, is not a man who knows how to bring a claim against the United States Government, 5,000 miles away. He can not afford to employ a lawyer; and the result is that these seafaring men do this work all the time and simply pocket the loss, and say things about the meanness of the United States Government, which I hate to hear said.

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Senator OVERMAN. This provision covers only one case?

Secretary REDFIELD. No; this provision simply says that out of the existing appropriation, to the extent of $500 per annum, the officers and seamen of the Coast Survey may be reimbursed for meals and clothing given by them to shipwrecked people whom they have saved; that is all. It does not call for a dollar of appropriation, and it limits the amount so used to $500 per year. But it came up in a striking way in that shipwreck case. That captain, out of his own salary, paid for this. I suppose he is waiting for the time when he gets back from Alaska so that he may prefer his claim against Uncle Sam. It will come up two years hence. None of us want that, and I think we ought to have that authority with that limitation.

Senator OVERMAN. It does not ask for an additional appropriation at all?

Secretary REDFIELD. No; it does not call for any appropriation. We have ample funds in that appropriation.

I am very much obliged to you.

FURTHER STATEMENT OF SENATOR CLAUDE A. SWANSON.

POST OFFICE AT WYTHEVILLE, VA.

Senator SWANSON. There is another small matter in which I am interested. The public-buildings act of June 25, 1910, authorized the construction of a post office at Wytheville, Va., using the words "post office." There is a weather bureau located at Wytheville, and under the decision of the Attorney General a building can be constructed only according to the terms of the appropriation. Consequently they will not be authorized to make arrangements or plans for a weather bureau in this public building.

Senator OVERMAN. They have the weather bureau right at Wytheville?

Senator SWANSON. There is a weather bureau located there. I have a letter from the Secretary of the Treasury stating these facts and what is desired. As it will take some time to get the bill through the regular channel of the Public Buildings Committee, what is desired is to change the authorization for Wytheville so that it will not be limited entirely to the post office.

I should like to have this inserted in the bill, as follows:

Wytheville, Virginia, post office: The post-office building heretofore authorized at Wytheville, Virginia, shall be so constructed as to provide quarters for all the governmental purposes in that city: *Provided*, That the said post-office building, together with any additional accommodations herein authorized, shall be constructed within the limit of cost fixed for said building.

I have a letter here which states the facts in that connection which I should like to have printed.

(The matter referred to is as follows:)

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, September 23, 1913.

The CHAIRMAN COMMITTEE ON APPROPRIATIONS,
United States Senate.

SIR: The public buildings act of June 25, 1910, authorized the construction of a post office at Wytheville, Va. Although the heading of the section in which this authorization was included provides that the buildings thereinafter men-

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tioned shall be for the accommodation of the post office and other governmental offices, the Attorney General has held in a similar case (Albuquerque, N. Mex., public buildings act of 1906) that such authorization is only for the object described in the particular item where the place is stated, i. e., for a post office only.

While the Weather Bureau has an office in Wytheville and it is considered desirable to provide accommodations therefor in the new building, in view of the above-mentioned opinion of the Attorney General the department feels that it is not authorized to make such provision. Therefore the plans and specifications for the Wytheville building have been prepared for a post office only.

It is practicable to change the present plans, however, so as to provide accommodations for the weather bureau, and this would be done if the necessary modification of existing legislation were made about as follows:

"Wytheville, Virginia, post office: The post-office building heretofore authorized at Wytheville, Virginia, shall be so constructed as to provide quarters for all the governmental purposes in that city: *Provided*, That the said post-office building, together with any additional accommodations herein authorized, shall be constructed within the limit of cost fixed for said building."

Respectfully,

W. G. McAdoo, *Secretary*.

Senator Swanson. I ask this because it will take some little time for it to get through the Committees on Public Buildings and Grounds of the House and Senate. The plans have been prepared, but the Supervising Architect states that the modifications can be made without any additional expense or trouble.

STATEMENT OF JUDGE IVORY G. KIMBALL, OF WASHINGTON, D. C.

Judge Kimball. Mr. Chairman, I will not take more than 10 minutes.

MEMORIAL AMPHITHEATER AT ARLINGTON, VA.

The authorization for the erection of a memorial amphitheater at Arlington was unanimously approved by the committees of both the House and the Senate, and passed both bodies without an adverse vote. The commission was organized by the election of the Secretary of War, Mr. Garrison, as its chairman, and we presented an estimate of $250,000 for the commencement of the work on this building. That estimate went through the usual channels, having been approved by the President, and came to the Appropriations Committee. What we want now is to have that appropriation added to the urgent deficiency bill.

The reason is this: If the Grand Army of the Republic were composed of young men, a delay until the next session of Congress would amount to but little. But we are getting to be old men. We are dropping off fast. We have been for 10 years trying to secure this authorization and appropriation. The comrades of the Grand Army are very anxious to see the dedication of that building. A delay of a year means the dying off of a large number of my comrades. I have been at work for 10 years to secure this. It is approved by everybody. Nobody objects to it. It was passed by the unanimous vote of Congress.

The estimate for the appropriation to commence work is before the committee, and we ask that it be included in this bill. The commission's hands are tied. We can not take a step, although the plans to be adopted have been approved by Congress, and are designated in the bill; but we can go no further until we get an appropriation.

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Therefore, appearing here as I do in the dual capacity of a representative of the Grand Army of the Republic, which is so intensely interested in securing the immediate erection of this building, and representing as a member the commission named by Congress to erect this building, I most earnestly urge the inclusion of this item in the bill now before the committee.

Senator OVERMAN. The only question is whether this is a deficiency item, Judge Kimball. This is the urgent deficiency bill: and where an appropriation has been made, and there is a deficiency, we can include it in this bill. The appropriation having been made, the question here is whether we have jurisdiction to put the item on this bill. That is the question which is involved. I will bring the matter up before the full committee.

Judge KIMBALL. I most urgently urge it for the reason I have stated. Does not that make it an urgent matter?

Senator OVERMAN. It is an urgent matter, but it is not an urgent deficiency. This is a deficiency bill, as I have said. We have the legislative appropriation bill, the sundry civil bill, and all those other bills, where these things go on; but this is just the winding up of a deficiency appropriation.

Judge KIMBALL. I earnestly urge you, Mr. Chairman, to consider the matter carefully, and consider it in the line that I, representing 500,000 old soldiers, ask you to do it now.

Senator OVERMAN. I will bring it up before the committee.

Judge KIMBALL. The soldiers on both sides are interested in it, because the building that is there now, or the alleged building, is only a hole in the ground; and in case of a gathering of soldiers of the North and the South—for the Confederates gather in that cemetery, too—they have no suitable place.

Why should there be a delay? Could not this question be brushed aside, and allow this to be done?

I hope you will put this matter, at least, in a little different catagory from some of the others that have been presented to you, and allow it. I can only say that the only ground upon which I ask it is that the comrades are dying, and they want to see this amphitheater completed. We want to see it. I want to see it. I want to be there at the dedication, and I hope you may be there, Mr. Senator.

Senator OVERMAN. I hope you may be, Judge Kimball.

Judge KIMBALL. I wanted to let you know what it means to us. It means much; and I ask your very careful consideration for it.

Senator OVERMAN. It will have very careful consideration.

Judge KIMBALL. I am very much obliged to you.

(Thereupon, at 12.20 o'clock p. m., the subcommittee adjourned until to-morrow, Friday, September 26, 1913, at 11 o'clock a. m.)

FRIDAY, SEPTEMBER 26, 1913.

The subcommittee met at 11 o'clock a. m.

CLAIMS AGAINST MEXICO.

Hon. Morris Sheppard, a Senator from the State of Texas, and Hon. William R. Smith, a Representative in Congress from the State of Texas, appeared.

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STATEMENT OF HON. WILLIAM R. SMITH, REPRESENTATIVE IN CONGRESS FROM TEXAS.

Representative SMITH. Mr. Chairman, I appear here to present to the committee some claims that have arisen out of the Mexican revolution. In April, 1911, I believe it was, the Mexican federal and insurgent troops fought a battle at Agua Prieta, just across the line between Arizona, at the city of Douglas, and Mexico, and in the course of that battle shots were fired across the line and wounded a number of people, killing some and wounding others. Later, I think in May of the same year, another battle was fought at Juarez, just across the line from El Paso, Tex., and there were a number of people in that city wounded in the same way, people who were on this side of the line, who, so far as I know, had never been in Mexico. American citizens who were at home attending to their own business were injured, and it is those people who are making these claims.

At first the parties presented their claims to the State Department, and the State Department, I think, took an erroneous view of the matter. It said these people should be required to go to Mexico and have their claims tried before a Mexican tribunal; in other words, to exhaust what they call in international law the legal remedies. The Mexican Government had what they call a consulting claims commission to sit in the City of Mexico to pass upon Mexican claims growing out of the revolution. We took the position that as these people had never been in Mexico, having been injured here within our own jurisdiction, under our own protection and under our laws, they ought not to be required to go to Mexico to present their claims. I think we have established that clearly to the satisfaction of every committee that we have been before in Congress. At least that is the position which has been taken by great international lawyers, such as Senator Root and others. But these people did prepare and present their claims to that commission, not that they believed they ought to be required to do it, but they did present them, and the claims are hanging before that commission yet, and so far as we know there has never been anything done about them.

Afterwards the State Department made complaint to the Mexican Government that action was not being taken, and the Mexican Government commissioned the Mexican consuls on the border at El Paso and at Douglas to hear these claims. These parties went before those consuls and had their claims heard and they were reported to Mexico City, and nothing has ever come of it since; no report has ever been made.

After that the Senate of the United States passed a resolution, which is found in this report here, providing that an Army board of three members should be appointed to make an investigation of these claims and report to Congress as to the justness of the claims and the amount that ought to be allowed. That commission was headed by Col. Kernan, of the War Department, a man who has had much experience in handling claims in Cuba growing out of the Spanish-American War, and who seems to be quite an expert international lawyer. They went down to Douglas and to El Paso and had hearings. The parties appeared before them: they took testimony; and it is here in this book. Then they made their report to Congress.

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Senator OVERMAN. What document is that?

Representative SMITH. This is House Document No. 1158, Sixty-second Congress, third session. So while these claims have not been adjudicated by the Court of Claims they have been adjudicated by this Army board. If you will read this report you will find that they went into the cases very thoroughly and discussed the legal questions involved and made their findings as to what the different parties ought to have. They found against some of the claims upon the ground that some of the claimants were not either native-born or naturalized citizens of the United States, and they found against others who were not wounded, but suffered injuries in other ways. These claims that we are presenting here are claims that they found in favor of and fixed the amount of damage.

The House Foreign Affairs Committee has reported this bill favorably twice unanimously. The Senate Committee on Foreign Affairs has reported it twice unanimounsly. It has passed the Senate once as an amendment to the sundry civil appropriation bill at the last session and it went out in conference.

Senator OVERMAN. What is the amount of the claims?

Representative SMITH. The claims amount to $72,000. That is the total amount. Here is the amendment that was put on the sundry civil appropriation bill, and here is an independent bill that I introduced on the same subject.

Senator OVERMAN. There is no question but that there is merit in the claim, but if we placed upon the deficiency appropriation bill any claims except adjudicated claims sent down by the department we would have a flood of claims here. That is the trouble I see about it.

Representative SMITH. Mr. Chairman, I will state frankly that I do not think these claims properly belong on an urgent deficiency bill; but we do not always adhere to the strict rules about that. I want to state to the chairman why we are here. A few days ago the Committee on Foreign Affairs of the House brought in a bill allowing a claim to an Italian who had been mobbed down in Florida, the claim amounting to $6,000, and the bill was put through the House. That bill got in and got almost through before I really found out what was doing, or else I could have presented this as an amendment there. It seems to me that that is a claim no more urgent than these claims of our own citizens.

Senator OVERMAN. That claim is not in this bill.

Representative SMITH. It is not in this bill; it was passed as a separate bill; but it has been offered in the Senate by Senator Lodge as an amendment to go in this bill.

Senator OVERMAN. These claims will go on if that goes on.

Representative SMITH. Senator Smith of Arizona, who is a member of the Committee on Foreign Relations, agreed that if they reported out the Italian bill he would attach these claims to it, and if that is going on here we want to urge these also.

Senator OVERMAN. Neither will go on or both will go on.

Representative SMITH. That is all we want.

Senator OVERMAN. That is, I am giving my view, so far as I am concerned. I am only one member of the committee. I say, if any claims outside of the regularly adjudicated claims from the different

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departments are to go on this bill. I see no reason why the claims you present should not also go on it.

Representative SMITH. Our position, Senator, is that these claims have occurred in our own country and they ought to be paid by us and then be made the basis properly of a national claim against the Government of Mexico.

Senator OVERMAN. I appreciate the fact that this is a case where an American citizen could not get his money but an Italian could. Just state the amendment you have prepared.

Representative SMITH. Very well. It is to insert the following:

That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $72,000, to be paid to the following-named persons, in the amount specified to each, for injuries sustained by shots fired across the American boundary line by soldiers and revolutionists on the Mexican side of the line in the year nineteen hundred and eleven, to wit: Adolfo Varela, of El Paso, Texas, $3,000; Virginia Moorhead, of El Paso, Texas, $3,000; Abundio Soto, of El Paso, Texas, $4,000; Edwin G. Heaton, of El Paso, Texas, $2,000; Celia Griffiths, of El Paso, Texas, $15,000; A. R. Chandler, of El Paso, Texas, $12,000; Emma Larson, of Douglas, Arizona, $1,000; Elmer E. Crowe, of Douglas, Arizona, $5,000; Francis F. Williams, of Douglas, Arizona, $5,000; John W. Keate, of Douglas, Arizona, $5,000; Joseph W. Harrington, of Douglas, Arizona, $15,000; William R. White, of Douglas, Arizona, $2,000.

Then, here is my bill which is before the House committee, and I have attached to it a provision that I think should be incorporated. It provides that this report shall be transmitted to the President with the request that he take it up with Mexico to collect back the claim.

Senator OVERMAN. I think that is right.

Representative SMITH. I will leave this with the committee. I thank you very much for having given me this opportunity to appear before you.

Senator OVERMAN. We are very glad that you came.

Senator SHEPPARD. Mr. Chairman, I wish merely to indorse what Mr. Smith has said, and to express the hope that if any items of this character are put in the bill this one may also be inserted.

Senator OVERMAN. I think you have a good case.

THE AMERICAN NATIONAL RED CROSS.

Hon. Theodore E. Burton, a Senator from the State of Ohio; Miss Mabel T. Boardman, member of the executive committee and chairman of the National Relief Board of the Red Cross; Maj. Gen. George W. Davis, chairman of the central committee, and Ernest P. Bicknell, national director, appeared.

STATEMENT OF MISS MABEL T. BOARDMAN.

Miss BOARDMAN. I know, Senators, that it is rather unusual to ask for this appropriation, for the proposed memorial to the women of the Civil War, in an urgent deficiency appropriation bill, but I wish to state why we think we are justified in doing so. We should not presume to ask for it unless we felt that we were justified.

In the first place I want to say regarding the characterization as a deficiency that nearly half a century has passed since the close of the war; their suffering in war, their sacrifices, their losses, and their services to the sick and wounded, has never been recognized in any tangible form. I think that proves the existence of a deficiency

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on the part of our Government which all of its representatives will be ready to rectify.

It has been said that woman is the greatest victim of war, and I think she is. She has none of the glory and she makes so much of sacrifice. So we feel that we can commend the memory of these women to Congress that it may give them some recognition.

Congress has appropriated nearly $5,000,000 for monuments for men in the District of Columbia. The public contributed to these monuments less than $200,000. We believe Congress will not fail to show the gratitude of the Nation for the labors, the sacrifices, the sufferings of the women of the Civil War by appropriating the desired amount. In the case of the monuments erected to men in the District, Congress appropriated 25 times what the public contributed, but in this case Congress is asked to appropriate only about one-half the entire amount in recognition of the wonderful service done by these women. It is true that you may ask, "Why is this an urgent deficiency"?

Senator OVERMAN. That is the point.

Miss BOARDMAN. That is the point. This is a bill that does not provide for the entire amount of money required. It provides for a contribution by Congress of $400,000 for the purchase of a site and toward the erection of the memorial building. It requires that $300,000 shall be contributed to complete the amount necessary. This amount must be obtained from probably a few people. The Red Cross is engaged in raising an endowment fund of $2,000,000. That is not much. Japan has $10,000,000 in such a Red Cross fund, and other countries have also many millions. For that reason, we do not want to interfere with the general work with respect to our own endowment by a general appeal. I will speak of that a moment later. So we are hoping to obtain this $300,000 from a few persons who are much interested.

(Here Miss Boardman spoke of several persons from whom contributions toward the $300,000 are pledged, or expected from persons of advanced age, and explained why it is important that the Red Cross should be in a position to appeal to them very soon. This was mentioned as a reason for placing this appropriation in the urgent deficiency bill.)

Another thing; I realize that in most of the provisions of this deficiency bill as it comes from the House and as I looked it over this morning, appropriations are made to complete work that has been commenced. I feel that in a way this work of which I speak has been commenced. We have an offer from Capt. James A. Scrymser, a Civil War soldier, of $100,000, and I know of others who are ready to contribute. I feel that is the commencement of the work. It is not as if something were to be started entirely by a Government appropriation. It is to complete a piece of work that the people have already begun by offering their contributions. It will bring property to the United States Government worth $700,000 at a cost of $400,000; and you will notice that the bill provides there shall be no further expense in any way. The upkeep of the building will be undertaken and carried on entirely by this organization. For that reason I feel that this is an urgent deficiency matter.

Furthermore, there are certain provisions in this bill as it comes from the House that are not to complete what has been commenced.

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They are to meet conditions which have arisen in the different departments. One hundred thousand dollars has been asked to enable the State Department to care for refugees from Mexico. Mr. Chairman, since the Mexican trouble began the Red Cross has spent over $30,000 in assisting the State Department in this work. There is also an appropriation to reimburse the Army for its expenditures in connection with the relief operations following the floods of last spring in the Ohio and Mississippi Valley. This item is between $600,000 and $700,000. There is an item also to reimburse the Navy to the amount of $130,000 for expenditures for supplies at the time of the flood. Those are important matters which were unforeseen, but they are not in the completion of any work. They are new appropriations. Then we find $7,000 appropriated in this bill to repair damage done by some vandals to the monuments at Gettysburg. There are other new appropriations. I notice one for the examination of fourth-class postmasters. I do not think that is for work started before. I ran across one of two other appropriations that it seemed to me were not entirely dependent upon completing works that have been already commenced. These items encourage me to hope that even if this does not come as a question of work that has been commenced it may be placed on this deficiency appropriation bill.

Then I wish to say a word in regard to the Red Cross feature of this appropriation because there might arise the question, "Why should the Red Cross have any right to use this building?" By act of Congress and by international treaty the Red Cross is an official organization. It acts under the treaty of Geneva. No Red Cross society can exist anywhere unless it has the authority to exist from its own government, and that Congress has given to the American Red Cross in the act of incorporation of 1905 and in previous enactments. This organization has for president the President of the United States, and upon our central committee the President appoints representatives of the State Department, the Treasury Department, the War Department, the Navy Department, and the Department of Justice. The Treasury Department gives us our treasurer, the Department of Justice our counsel, and an officer of the State Department is the chairman of our international relief board. In every State there is a committee of representative men, a board, of which the governor of the State is the chairman. These boards act as finance committees in cases of disaster when relief funds must be collected.

The work of the Red Cross is divided among three great boards, the war relief board, the national relief board, and the international relief board. Take the war board as an illustration of the work which these boards perform. That board is studying all kinds of means of war relief. We put in 72 women nurses, doctors, automobiles, brought in our mining first-aid teams, and established 14 relief stations at the great Gettysburg encampment, and spent between five and six thousand dollars there. In these stations our doctors and nurses gave help to 11,540 old veterans who were attending the encampment. All this we did at the request of the War Department. It was a slight indication of how we should mobilize in case of war. We have 4,000 of the best trained nurses in this country, and in a case of war or disaster these nurses can be brought into service. Two

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hundred and thirty-six nurses were mobilized and placed in relief service in the Ohio and Mississippi floods last March and April.

We have trained about 150,000 men, women, and boys within the last year in first-aid work. Last Saturday in Knoxville, Tenn., there was a competition between 24 Red Cross first-aid teams representing different mining companies, and thousands of people were present. I wish you could have seen the work those men have been instructed in. They are taught what to do at once in cases of injuries of all kinds, from accidents including fractures, cuts, electric shock, asphyxiation, etc.

Up at Scranton another competition occurred on the same day in the anthracite coal region, and a little earlier a similar one in the bituminous coal region of Pennsylvania. By means of these competitions among the miners, railroad men, and other industrial employees we keep the interest of the men alive. Over a thousand miners are killed in our mines every year and over 7,000 injured. We not only teach first aid, but also the prevention of accidents. Our textbooks have been translated into Slavic, Polack, Lithuanian, and Italian; and even the Chinese have translated them. In the event of war these trained men will be of inestimable service, and for that reason the Army is very much interested in this particular line of Red Cross work.

If we turn to the National and to the International Relief Boards we see what has been accomplished in their departments. In seven years' time the American public has given for relief work in disasters over $7,500,000 to the Red Cross. That is an average of $1,000,000 a year that is expended in relief work, and in that period we have been on 70 fields of disaster. The year 1913 has been a busy one for the Red Cross. You know how last March Peachtree, Ala., was injured by a cyclone. Two days after there came the great cyclone in Omaha, Nebr. Then followed the serious floods in Ohio and in the Mississippi Valley, and a little later the mine disaster at Finleyville, Pa. The Red Cross has been in all those fields. More recently occurred the Hot Springs fire, where help was desired and extended. Thus we are constantly appealed to and our trained agents are in great demand. Besides the financial contributions of $7,500,000 mentioned, great quantities of clothing and food have been contributed. These have been carried free by the railroads often when they themselves were in a crippled condition. At times of serious disasters the telephone and telegraph and express companies put their services at the free use of the Red Cross. In that way we have had besides supplies a large amount of service given free of all expense. I think if we could add to the $7,500,000 the amount of help furnished in supplies and in service by railroads, telegraph, and telephones, etc., it would bring the total up to over $10,000,000 that has been spent through the Red Cross is seven years for the benefit of people suffering from disasters and war, and all our accounts are audited by the War Department.

This, as you know, does not include the work of the little Christmas seal. You perhaps do not know that that has raised $1,400,000 for tuberculosis work in the country. Our endowment fund so far is $822,000, which is invested and controlled by a board of trustees appointed under the special authority of Congress. Then Mr. Jacob

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H. Schiff will give us an additional $100,000 for carrying on the rural nursing administrative work. So I could go on at much length of summary and give you an extended idea of the value of the organization. Take the flood of last spring in the Ohio and Mississippi Valleys. The State legislature appropriated $250,000, which was placed under the administration of Red Cross, which has administered about $3,000,000,000 in relief work in that territory. The Ohio State Legislature appropriated $250,000 for that work and placed it in the hands of the Red Cross for expenditure. So generous were our own contributions that only $100,000 of the State appropriation has been used, making a saving to the State of Ohio of $150,000.

The more the Red Cross gives for relief the less it is necessary for the Government to appropriate. The Government expended perhaps for relief of flood sufferers between $800,000 and $900,000, and who can doubt that the amount would have had to be very much larger had it not been for this expenditure of $3,000,000 by the Red Cross. So I think you can realize its value to the country, and it never has asked Congress for anything. The only money that Congress has appropriated for the Red Cross was $20,000 for a part of the expense of holding the international conference of the Red Cross in Washington, and one or two small appropriations of two or three thousand dollars to send delegates to foreign congresses.

Senator OVERMAN. I should like to have you state the purpose of the building.

Miss BOARDMAN. It is to have a double purpose. As a memorial to the women of the Civil War it should be a beautiful and dignified structure. It has also seemed appropriate that this memorial should perpetually serve to celebrate the humane and devoted efforts of these women upon the battlefields and in the hospitals, and to this end it has seemed proper that it should take the form of a building to be occupied as the permanent headquarters of the American Red Cross.

Senator OVERMAN. A memorial to Southern women as well as Northern?

Miss BOARDMAN. Yes; for Southern and Northern women alike. It is proposed to place upon the building a tablet inscribed perhaps as follows:

A MEMORIAL
built by
The Government of the United States
and
Patriotic Citizens
to
The Women of the North
and
The Women of the South
Held in Loving Memory
by
a now united country
and
That their labors to mitigate the sufferings
of the sick and wounded in war may be forever perpetuated
this Memorial is dedicated to the service of
The American Red Cross.

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The women who suffered in the war are fast passing away. There are not many of them left, and I think in their lifetime they should be made to feel that their services were remembered and that thought of their action was taken in a way to be of use and that the country is repaying a debt it has owed them for many years.

Senator PERKINS. You took up the work of the Sanitary Commission, did you not?

Miss BOARDMAN. Yes; and it is a rather interesting bit of history. When the treaty of Geneva was first considered, in 1864, it was thought very doubtful if it could be practically carried out. Mr. Bowles, who was the representative of the Sanitary Commission in Europe at that time, was able to go before the convention in session at Geneva and say that during our own war such provisions had been practically carried out. That was the turning point that changed it. After the treaty was drafted and at the dinner celebrating it the first Red Cross flag stood in the center of the table, and the presiding officer took it and handed it to Mr. Bowles. So we have a very particular reason to feel interested in the treaty, though we did not sign it until nearly 20 years later.

If there is any question that the Senators should like to ask me I should be very glad to answer.

Senator OVERMAN. The building is to be erected in Washington, of course?

Miss BOARDMAN. It is to be erected in Washington, and must be very centrally located because in time of war or disaster we must be in close and constant touch with the War and Navy Department as well as the State Department.

Senator OVERMAN. Do you think the appropriation proposed is sufficient?

Miss BOARDMAN. I think so for this administrative building, and when the time comes for other buildings the Red Cross will erect them as the work goes on.

STATEMENT OF SENATOR THEODORE E. BURTON.

Senator BURTON. Mr. Chairman and gentlemen, I wish to say a few words about the scope of a deficiency appropriation bill. While I was a Member of the House no Member quite so strenuously as I maintained that deficiency appropriation bills should be limited to the completion or the continuance of activities of the Government insufficiently provided for. But there is no use denying that both Houses have altogether violated that rule, that whenever special reasons exist for the making of an appropriation of money the money is appropriated out of the Federal Treasury, for a great variety of purposes.

I can not add a word to what Miss Boardman has said about the exceptional reasons why this appropriation should be made now. In a very important sense this is a continuation of work of the Government insufficiently provided for. The Red Cross is recognized by legislation and by treaty. Whenever a great emergency arises the Federal Government and the State governments alike rely upon that agency to provide for suffering. It has done some of the most efficient work in the whole annals of charitable work in the assistance of those suffering from disasters.

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It appears that this provision was, in a different form, adopted in the bill which was transmitted from the Senate to the House of Representatives at the last session. I have here the public-buildings act as passed by the Senate. On page 55 it appears that an appropriation of $400,000 was authorized for this purpose. This measure was passed by the Senate and was unanimously approved and recommended by the Committee on Public Buildings and Grounds of the House. It is not probable that the money will be expended immediately. The public-buildings bills are for the most part authorizations. It is not necessary for me to explain that it is not merely a provision for the loyal women of the North. This is broad and national. It provides for the devoted women of the North and the South as well.

So it seems to me, Mr. Chairman, there is every reason why this has a proper place in a deficiency appropriation bill. I think I may say also that among the various propositions presented to you this is likely to receive more favorable consideration in the House than others which are named.

STATEMENT OF GEN. GEORGE W. DAVIS, CHAIRMAN OF THE CENTRAL COMMITTEE.

Mr. DAVIS. Mr. Chairman, I should like to say a few words. I am one of the few remaining survivors of the Civil War. I served from McClellan's peninsular campaign to Appomattox. I was in continuous service throughout the whole conflict, and I know the signification of it to the mothers and sisters of the country, to my own mother and sisters. I know what it was all during the war, and I know that in the South where I was living at the outbreak and for some months after, the anxieties, suffering, and agonies were ten times worse, if possible. Those are simply personal experiences, and that is all that I care to say personally.

I would, however, mention one fact not alluded to by Miss Boardman. No member of the central committee or of the board of incorporators receives any compensation, honorarium, or reward of any sort for the services which he renders to the Red Cross.

I am much obliged to you, Mr. Chairman.

STATEMENT OF ERNEST P. BICKNELL, NATIONAL DIRECTOR.

Mr. BICKNELL. I can not add anything, Mr. Chairman, to what has been so well said as to the beautiful sentiment involved in this enterprise, except that if we are to dedicate this building, which we are looking forward to in 1915, in that way helping to celebrate 50 years of a United country we must be able to make an early beginning.

On the practical side there is this to be said. The work of the Red Cross has so tremendously grown since Congress gave it official status and governmental backing, so to speak, the demands on it have so tremendously developed, that the administrative feature has become a matter of vast importance. In order that its large financial affairs may be administered according to modern ideas of accounting and efficiency, in order that we may be able to meet the requirements of Congress and the War Department, which through

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its auditors is required to audit our accounts every year, it becomes absolutely essential that we shall have adequate office room. The War Department has very kindly given us headquarters in one of the rooms of the War Department. That room is about one-third as large as the room in which this committee is now sitting.

The War Department, as you gentlemen know, is crowded and overflowing around all its edges, so that we are grateful for having one room. But we have had to spread out, just as the departments have done. We have six rooms in other parts of the city, and the work is sadly split to pieces. These are temporary quarters for which we are paying rent. The whole question of efficiently meeting the tremendous emergencies, which come upon us without an hour's notice, is a very serious one, and it is becoming more serious as the days go by.

The Red Cross has to be organized in practice, substantially as a fire department. We may not be called on for anything in an emergent way to-morrow; we may be called on before daylight to-morrow morning to meet some tremendous disaster. There is no time then to organize machinery and make plans to call people in and ask "Can you spare us the time to do this?" and "Can you not come and help us for a few days?" We must have the machinery ready every minute of the day or night. We are trying to do it. We are rather proud that we have been able to meet disasters in the last few years in a way to win such words of approval as Senator Burton has just uttered.

We appreciate that we can not keep it up and discharge the great duty that is laid on us, with credit to ourselves and to the Government of the United States, unless we can have headquarters in which we can have a proper force, properly organized and centralized, in which we can have a library, in which we can have records, in which we can do all those things that go to make up efficiency and promptness in the sense that the times now absolutely demand.

Senator PERKINS. Did you present this matter to the Committee on Appropriations of the House?

Mr. BICKNELL. I think it has not gone before the House committee.

Senator OVERMAN. We are very much obliged to you.

FREEDMAN'S SAVINGS & TRUST CO.

Rev. James L. White, representing the association known as the Home for the Relief of Aged and Infirm Colored People; Rev. J. Milton Waldron, D. D., representing the Lott Carey Foreign Mission; Rev. Edgar E. Ricks, Rev. J. Harvey Randolph, Rev. W. J. Howard, D. D., representing the Baptist Ministers' Conference of the District of Columbia, and John H. Beale, appeared.

STATEMENT OF REV. JAMES L. WHITE.

Mr. WHITE. Mr. Chairman, this amendment presented by Hon. Mr. Bankhead was intended to go in the sundry civil appropriation bill, but we have amended the title so as to go in the urgent deficiency bill. We have also amended it according to the recommendation

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of the Secretary of the Treasury, through the direction of the President of the United States, so that it now reads:

TO PAY THE BALANCE DUE DEPOSITORS IN THE FREEDMAN'S SAVINGS AND TRUST COMPANY.

That the commissioner of the Freedman's Savings and Trust Company and his successors in office be, and the same are, authorized and directed to pay, or cause to be paid, under such regulations as said commissioner, with the approval of the Secretary of the Treasury, shall prescribe, to all depositors of the Freedman's Savings and Trust Company whose accounts have been properly verified and balanced under existing laws, or to their heirs or legal representatives, a sum of money equal to the verified balances due said depositors from said company at the time of its failure, less the amount of dividends which may have been paid from the assets of said company; and for this purpose the sum of $1,291,744.50 is hereby appropriated out of any money in the Treasury of the United States not otherwise appropriated, said amount to be placed to the credit of the said commissioner by the Secretary of the Treasury for the purpose of this act specified; and that the clerical expense for the settlement of these claims be paid out of the money herein appropriated; and that none of said accounts which have been sold, transferred, or assigned by said depositors, their heirs or legal representatives, shall be allowed or paid under the provisions of this act: *Provided*, That any money not called for within two years after the passage of this act shall be covered into the Treasury of the United States.

SEC. 2. That it shall be unlawful for any person to directly or indirectly accept or receive from any such depositor, or from any heir or legal representative of any such depositor, or from any beneficiary of this act, any compensation for any service or supposed service rendered or claimed to be or to have been rendered in the collection or payment of said deposit. Any person who shall violate this section shall be punished by a fine of double the amount so accepted or received and not more than $1,000 in addition thereto, or by imprisonment of not more than one year, or both.

The work is on hand. There is a commissioner in the Treasury Department. The Comptroller of the Currency is the commissioner of the Freedman's Savings & Trust Co. They have paid 62 per cent and there is 38 per cent due, just $1,291,744.50.

Mr. Chairman and gentlemen, you will please accept my thanks for the honor of being heard on this measure to pay the balance due the depositors in the Freedman's Savings & Trust Co. This measure has been recommended favorably by five of the Presidents of the United States. Mr. Cleveland, in his annual message to Congress December, 1886, called the attention of Congress to the plain duty the Government owed the depositors in the Freedman's Savings & Trust Co. Mr. Taft renewed the recommendation of his predecessors in his annual message to Congress. We were honored to present this to the honored President, Mr. Wilson, on the 12th of March, 1913. He took it up immediately and we received an answer the same day. He referred it to the Secretary of the Treasury, and on the 10th of April we received the President's views through the Secretary of the Treasury, in which he warned us against class legislation and suggested such amendments as would enable us to get it through this special session. It was a wonderful thing for a President to take such an interest in the humble citizens within eight days after he had taken charge of the Government as an Executive and so pressed in preparing his message for Congress and with office seekers, to send up through the Secretary of the Treasury and pointing to the recommendation of his predecessors, which will enable us to get action in the extra session. I will repeat that four of his predecessors had rec-

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ommended it, but all others waited until the regular session. I believe the present Executive has read that book which teaches "To-day if ye hear my voice, harden not your hearts." He therefore sent us through his Secretary of the Treasury a letter, a part of which we wish to be included in this hearing, and also my letter to the President.

Now I will turn to the history of this subject.

THE FREEDMAN'S BUREAU AND THE FREEDMAN'S BANK, LATER THE FREEDMAN'S SAVINGS & TRUST CO., AND THE BALANCE DUE THE DEPOSITORS IN THE FREEDMAN'S SAVINGS & TRUST CO.

The Freedman's Savings & Trust Co. was authorized by an act of Congress dated March 3, 1865. By this act of Congress the said bank was required to invest two-thirds of its capital in United States securities. Most of the branches of this bank were presided over by officers holding a commission and clothed in the uniform of the United States.

This company failed in 1874. Congress created a commissioner to take charge of the affairs and to report annually to Congress. When this company failed it was liable in the sum of $2,939,925.22 to 61,131 depositors, a dividend aggregating 62 per cent having been paid, leaving 38 per cent due depositors, which is $1,291,744.50, still due. This measure was brought to the attention of the late President Grover Cleveland, and in his annual message to Congress, December, 1886, he said:

I desire to call the attention of Congress to the plain duty which the Government owes the depositors in the Freedman's Savings & Trust Co. This company was chartered by the Congress for the benefit of the most humble of our people.

This recommendation was honored by the Congress, and through the aid of the late Senator Vest, of Missouri, and Mr. Sherman, of Ohio, it passed the Senate unanimously. It was recommended favorably under the administration of the late President McKinley and also the ex-President, Mr. Roosevelt, and passed the Senate unanimously in the Sixtieth Congress through the aid of the late Senator McLaurin, of Mississippi, and the Hon. Senator Flint, of California, and was unanimously reported in the House, but on account of the press of business it died on the calendar.

It was called to the attention of the Hon. William H. Taft, President, on April 8, 1909, and he referred it to the Department of Justice, and after a thorough examination of the whole subject the opinion of the Attorney General was that such a recommendation as made by Mr. Cleveland would be proper.

The President in his annual message to Congress at the first regular session of the Sixty-first Congress said:

Recommendations having been made by my predecessors that Congress appropriate a sufficient amount to pay the depositors in the Freedman's Savings & Trust Co., I renew that recommendation.

The committees of both branches of Congress honored his recommendation and it was on the calendar in both houses when Congress adjourned the 4th of March, 1911.

There were 50 white men who were trustees of this Freedman's Trust Co., and the officers of the Government commissioned by the

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Secretary of War, through the directions of the President, were sent South to get the colored people to intrust their money to this corporation, and to assure them that the Government was responsible. The pass books issued to the depositors in the Freedman's Bank bore on its cover the likenesses of President Lincoln, Gen. Grant, also Gen. Howard and others whom the freedmen had learned to revere as the special benefactors of their race; the flag of the United States was draped as a shelter over the buildings and designed to assure them that the United States would protect their interest.

This measure has the indorsement of the National Baptist Convention, representing 2,600,000 communicants; the African Methodist Episcopal Church representing 800,000 communicants, and the African Methodist Episcopal Church, representing 600,000; also the National Negro Business League, representing the colored business men throughout the United States and numerous organizations and representative colored citizens. It also has the indorsement of the press of the country for its legislation.

The beneficiaries of this measure are all poor people, and as some of them are greatly in need we hope to get your favorable recommendation and early consideration in Congress for these people, who have been waiting long and have been encouraged in every Congress by the favorable recommendations from the executive department and the committees in Congress, when both political parties have all agreed that it is a just debt, and that it is only giving the people back their own money. It seems, therefore, that the relief sought should be granted.

When the bank was changing to a trust company the money was used largely for the improvement of the Government's property in this city. It has been said that contractors would go to the bank and draw as much as $50,000 at a time to pay for the improvements which were going on in this city at that time. Contractors cutting down the west front of the Capitol, putting in air shafts and sewers, laying out streets in this city, paving Pennsylvania Avenue, were all largely paid for from the old Freedman's Savings & Trust Co.

Senator OVERMAN. How did the contractors get that money out of the bank?

Mr. WHITE. I will answer you. After it was changed from a bank to a trust company it was loaned on different securities. It was first a trust and the money was not loaned out unless on two-thirds Government security.

Senator OVERMAN. The contractors borrowed money from the bank?

Mr. WHITE. The contractors borrowed money from the bank, and when the contractors failed and could not conclude the work the Government took over the work and completed it. So the United States Government now is holding the securities against the District government, and the main portion of that money belongs to the Freedman's Bank that the contractors had borrowed—that the contractors had borrowed; Shepherd had to go away, and they could not collect out of the Government. As I said, the main part largely of the debt was done by the Freedman's Bank, with. I will not say money of the colored people, because there were other people in it. The

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Government did not have any money; it was the Freedman's Bank money.

I have a petition here that I want to read:

We, the undersigned, citizens of the United States, respectfully petition the Congress of the United States, and ask that the Senate and House of Representatives include in the forthcoming deficiency bill the amount necessary to pay the balance due the depositors in the Freedman's Savings & Trust Co., namely, $1,291,744.50. This measure has been favorably considered by previous Congresses, and was reported favorably in the closing hours of the Sixty-second Congress, on the 28th of February last, and we pray that this measure may receive favorable consideration at the hands of the Sixty-third Congress.

This petition is signed by three or four hundred pastors and laymen in different States of the Union. I have several other things here that I want to talk about. Mr. Chairman and gentlemen, I want to read the letter that I sent to the President, and then read a part of the letter of the Secretary of the Treasury. I do not think I ought to read the President's letter, but I will read the letter of the Secretary of the Treasury that he sent by direction of the President. This letter that I wrote to the President contains what I would say to the committee:

WASHINGTON, D. C., *March 12, 1913.*

Mr. PRESIDENT:

I call to pay my respects to you personally, and as I have the honor to represent an association known as the Home for Aged and Infirm Colored People, which object is for the relief of the colored people, I have drafted an amendment to pay the balance due depositors in the Freedmen's Savings & Trust Co., which we want to go in the sundry civil appropriation bill. Four of your predecessors have recommended this legislation, and the committees in both branches of Congress have acted favorably on it. It passed the Senate unanimously in the Sixtieth Congress and was reported favorably in the House.

It was also reported favorably in the Sixty-first Congress and reported favorably as an amendment to the general deficiency bill on the 28th of February last, but the bill passed before it was printed and returned.

Mr. Cleveland called the attention of Congress to the plain duty that the Government owed the depositors in the Freedmen's Savings & Trust Co., and Mr. Taft renewed the recommendation of his predecessors.

We feel assured that if you will honor us with your favorable recommendation, as your predecessors have done, these poor people will soon get the relief they have waited so long for and which has been and is acknowledged by all parties to be justly due them.

Our plans are to ask the Hon. Senator Bankhead, of Alabama, to present the amendment and the Hon. Mr. Tillman, of South Carolina, who understands the subject, as one of these banks was in South Carolina, to aid in getting it through the Senate.

I will repeat in this connection that this measure has passed the Senate unanimously twice before and there never has been a word against it in the committee nor in the Senate. Therefore, we feel assured that with your favorable recommendation these people, who are so much in need, will be able to get the relief which they have so long desired.

You will please accept my thanks in advance for your favorable recommendation. I have the honor to remain,

Very truly, yours, Rev. JAMES L. WHITE.

P. S.—These papers, that is, the report and statement, contain two subjects, viz, the Freedmen's Savings & Trust Co. and the Old Freedmen's Bureau.

Hon. WOODROW WILSON,
President United States,
White House, Washington, D. C.

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This letter I signed and sent to the President. The President took it up that day, and here is a part of the letter from the Secretary of the Treasury by direction of the President:

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, April 10, 1913.

Rev. JAMES L. WHITE,
2533½ Fifteenth Street NW., Washington, D. C.

SIR: Your letter of March 12, addressed to the President, with inclosure, in reference to the proposed amendment to the sundry civil appropriation bill providing for the payment of a balance due depositors in the Freedman's Savings & Trust Co. has been referred to this department.

The amendment submitted proposes to appropriate a sum sufficient to pay the balance due to depositors in the Freedman's Savings & Trust Co., but limits such payments to those "heretofore held in slavery in the United States or who were descendants of such persons."

That was the point, to guard against what would be class legislation. This letter says it had passed the Senate. It was passed in the House and because it restricted the payment only to former slaves and their heirs that was class legislation. So in this measure we changed that and make it agree with this recommendation. The Secretary of the Treasury proceeds:

Some time between 1886 and 1889, during Comptroller Trenholm's administration, a bill passed the House of Representatives making an appropriation to pay the balance due all the depositors in this country. This bill was amended in the Senate to restrict such payments to former slaves or their descendants and failed to become a law because of the fact that it was regarded as class legislation, and that the appropriation should cover all or none.

In a message to Congress a year or two ago the President favored an appropriation to pay the balance due depositors of this company, and the Comptroller of the Currency made a like recommendation in his annual report for December, 1908.

* * * * * * *

Respectfully,

W. G. MCADOO,
Secretary of the Treasury.

Mr. Chairman and gentlemen, I want to say a word or two in reference to this subject. I want to say it because I know it. There has never been in the 38 years that this measure has been in hand a time when this subject has come before the majority Members of the Senate but that they have favored it. Any measure that passed the Senate unanimously in the morning hour when the Senate is full carrying a million and a quarter dollars without any Senator saying a word against it is evidence that everybody knows it is a just measure and it is only giving the people back their own money.

Senator OVERMAN. How many of the depositors are living?

Mr. WHITE. There were 61,131. I made that calculation. The House committee gave me a hearing. I think there are about 40,000. Of the 61,131 in some cases there are two or three heirs to the parties who lost the money, so that while the number of the original depositors has been reduced by death, it has increased the number where a man had a book and had two or three children.

Senator OVERMAN. Where are all the pass books?

Mr. WHITE. I mean to say this provides that if any have been sold or transferred they must be returned. When anybody bought a book it was on the recommendation of President Taft that the assignment claims should be barred. So the amendment bars all claims

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assigned or sold or transferred. They have to carry them back to the original owners or to their heirs before they can be paid.

Senator OVERMAN. They were not all assigned?

Mr. WHITE. No; I think not. Hundreds we could find here, but this provision will make those who bought the books return them, because they can not get anything for them.

Then another thing, gentlemen, you will not be required to employ an officer, because Congress, in 1874, made the Comptroller of the Currency the commissioner of the Freedman's Savings & Trust Co., and all that Congress need do is to pass the act. He can pay it because the office and machinery are already running to pay the balance due. Let me read from a letter I addressed to Senator Martin, the chairman of this committee, a few days ago:

This is the same measure that passed Congress unanimously in the Sixtieth Congress and was unanimously reported in the House. I was honored by the chairman of the committee on the 28th of February last to poll the committee, and it was reported favorably to go in the deficiency bill, but it was too late. I was honored by the chairman, Mr. Fitzgerald, Committee on Appropriations in having a hearing. He and Mr. Sisson and Mr. Johnson of South Carolina, with a majority of the members of the subcommittee, which can be seen by referring to the hearings on the deficiency bill on the 18th of July last year, and I think on the 208th page, and they all agreed that the people ought to have their money.

There were 34 branches, and 31 of them were in the South and the others in Baltimore, Philadelphia, and New York, so that it can be seen that the measure is for the colored people nearly of the South.

Then, of course, every man who has studied it has agreed that it is a deficiency. It is to pay a balance.

Senator OVERMAN. Were you one of the depositors?

Mr. WHITE. No, sir.

Senator OVERMAN. Have you any pass books?

Mr. WHITE. No, sir; I never had one in my hands. I have seen them.

This has been passed upon and recommended by five of the Presidents of the United States after it was investigated, and this Senate has reported it unanimously at four different times, and has passed it twice without a dissenting vote.

I want to speak briefly with reference to the report submitted by Senator Borah in the Sixty-first Congress, second session. Here is the report that the Senate Committee on Education and Labor made on this subject.

Senator OVERMAN. We have that report before us.

Mr. WHITE. Then there is no need of my going over that. There are one or two items in the House report that are not in the Senate report. This is just to give the people back the money. It is just simply to give the people back the balance of the money. You paid 62 per cent, and it is to pay the other 38 per cent. I tried to get it on the omnibus bill, but I could not do it.

Senator OVERMAN. Why did not Congress, when it gave 62 per cent, give it all?

Mr. WHITE. They recommended to make up the deficiency. It is a deficiency in the amount. The Comptroller of the Currency, who is the commissioner, is waiting for this action. The comptroller has been paid 37 years as commissioner of the Freedman's Savings & Trust Co., when if he could have paid the money the office could

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have been abolished and the income from the Second National Bank, where the stock is invested, could have been diverted to some other use if the Government had paid the people all their money.

There is not a man in the Senate who is in the least shadow of blame about the people not having their money. It is nobody's fault but ourselves. There is not enough in it to employ a lawyer to present it. The only thing that ever caused the people not to have their money is because it has not been brought properly before the Senate in a way that they could act upon it. I feel assured from what I have said and what has been said by high authority and what the Senate knows that this matter will receive favorable consideration at your hands. I want to refer in this connection to a statement made in the House report and which is not in the Senate report. It gives the amount. It states that during the 10 years of the existence of this bank there was $57,000,000 went through it. That covered the period from 1865 until 1874, when the trust company failed.

This House report also states that this payment has been recommended by five of the Comptrollers of the Currency. All the Presidents of the United States have recommended this legislation favorably from Mr. Cleveland down to Mr. Wilson. Mr. Wilson has recommended it through his Secretary of the Treasury, to whom he referred it.

I think I ought to say another word for Mr. Wilson. Mr. Wilson did wonderfully, that in eight days after he had assumed office with all his work he should give this matter his personal attention and present it to the Secretary of the Treasury, and have the Secretary send us his letter so that we could get it in the appropriation bill.

Mr. Chairman and gentlemen, there is one of the depositors here. He is a man who I feel has lost his property. He is now working hard as a shoemaker. He has to rent rooms. He has lost his money. He is here and I should like you just to hear a word from him. Let him state it in his own way.

Senator OVERMAN. Very well, we will hear him.

Mr. WHITE. Mr. Beale, will you say just a word here?

STATEMENT OF JOHN H. BEALE.

Senator OVERMAN. Have you one of those pass books?

Mr. BEALE. Yes, sir. I did not bring it, but I could bring it some other time and show it to you.

Senator OVERMAN. You were one of the original depositors?

Mr. BEALE. Yes, sir.

Senator OVERMAN. How much did you have deposited?

Mr. BEALE. I did not have so much. I had not paid so much.

Senator OVERMAN. How much?

Mr. BEALE. I suppose not more than about $25. I drew $5 I think, and they paid five dividends.

Senator OVERMAN. They owe you about $5?

Mr. BEALE. No; they owe me about $18 now, sir. I think the book will show.

Senator BRYAN. They owe you not over $8 or $10 if you were paid 62 per cent.

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Mr. BEALE. The book will show. I think we ought to have what belongs to us anyhow, sir. The money belongs to us and I should like to have what is coming to me, little or much.

Senator OVERMAN. Is there anything more you want to say about it?

Mr. BEALE. No, sir.

Senator BRYAN. Who was the president of the bank you deposited your money in?

Mr. BEALE. A man by the name of Stickney.

Senator BRYAN. Was it here in Washington?

Mr. BEALE. Yes, sir.

Senator BRYAN. Was he an Army officer?

Mr. BEALE. I do not know whether he was or not.

Senator BRYAN. Did he wear a uniform?

Mr. BEALE. I do not know, sir, whether he did or not, but he was the president.

Senator BRYAN. Did you not see him when you deposited your money? Did you never see him?

Mr. BEALE. No; I used to see the cashier; but I have seen him since, and he told me that he was the president.

Senator BRYAN. Did he tell you that you deposited your money with the Government or with the bank?

Mr. BEALE. It was understood it was the Government; that the Government was responsible for it.

Senator BRYAN. Why did you select that as the bank in which to put your money?

Mr. BEALE. I selected it because I supposed hundreds of people had selected it, and I thought it was all right, and they said it was. The National Government was behind it, and that is the reason I put my money in there, sir.

Senator BRYAN. You thought your money would be safer there than in any other bank?

Mr. BEALE. Yes, sir.

FURTHER STATEMENT OF REV. JAMES L. WHITE.

Senator PERKINS. I think, Dr. White, when we passed the bill through the Senate before it was the purpose also to have the claims of colored soldiers adjusted.

Mr. WHITE. There were two subjects. One was the freedman's bureau and the other was the freedman's bank. There were two commissions. There was a commissioner of the freedman's bank and there was a commissioner of the freedman's bureau. March 3, 1867, the freedman's bureau was discontinued. There is $330,000 due the heirs of deceased colored soldiers of the Civil War. The bill that you got through for us once was to use the money found due deceased colored soldiers. That amendment is pending here somewhere now. It was to appropriate $200,000 of the amount found due deceased colored soldiers.

Senator PERKINS. That is a different proposition altogether.

Mr. WHITE. It is a different proposition altogether. There are two bureaus. I can explain it.

Senator BRYAN. We understand it.

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Mr. WHITE. Now, Mr. Chairman and gentlemen, here is a resolution passed by a convention representing a great portion of the colored people of the South:

WASHINGTON, D. C., *September 5, 1913.*

Be it resolved, That we, the officers and members of the Lott Carey Baptist foreign mission convention, in the seventeenth annual session assembled, do hereby heartily indorse the effort of the Rev. James L. White and others associated with him to have included in the present deficiency bill the necessary amount to pay the balance due the depositors in the Freedman's Savings & Trust Co., namely, $1,291,744.50, due to the 61,131 depositors of said institution; be it

Resolved secondly, That a committee consisting of Revs. J. Milton Waldron, E. E. Ricks, and J. Harvey Randolph be appointed by this convention to present copies of these resolutions to Senator Thomas S. Martin, chairman of the Senate Committee on Appropriations, and to urge him to include in the present deficiency bill the sum of $1,291,744.50, with which to pay the remainder due to the 61,131 depositors of the Freedman's Savings & Trust Co., and that said committee be also instructed to present an amendment to the present deficiency bill and urge its incorporation therein and insist upon its passage; be it

Resolved finally, That a copy of these resolutions be spread upon the minutes of our convention and a copy be sent to the press for publication.

Done by order of the Lott Carey Baptist Foreign Mission Convention, at Washington, D. C., September 5, 1913.

C. W. BROWN, *President.*
A. W. PEGNES, *Secretary.*

Rev. Dr. Waldron is here, and I would like to have you give him a few minutes.

Senator OVERMAN. Can he add anything to what you have said?

Mr. WHITE. I think he will present something new.

Senator OVERMAN. Very well; we will hear him.

STATEMENT OF REV. J. MILTON WALDRON.

Senator BRYAN. What is your profession?

Mr. WALDRON. I am a minister of the gospel, pastor of the Shiloh Baptist Church in this city. I was formerly in Florida. Senator Bryan knows me. Do you want to ask me a question, Senator?

Senator BRYAN. I see in the report here it is stated that the officers of these banks were in many instances officers of the Government—that they were military officers. Of course, you do not know anything about what was done; you were not old enough then; but have you inquired among the depositors, or those who do know, so as to be able to state whether the banks were, as a rule, presided over by Army officers as presidents, and whether they had the flag over the building so as to cause the depositors to believe that they were depositing their money with the Government?

Mr. WALDRON. Senator, I have given the matter some consideration in Florida as well as here and in other places, and almost invariably the statement was made that they thought they were depositing it with the United States Government.

Senator BRYAN. That is the point I wanted to bring out.

Mr. WALDRON. They believed that they were depositing their money with the United States Government, and that arose from the fact that these Army officers were encouraging them to save. Of course, they would not have time to take off their uniforms. What-

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ever they did do they simply did as a matter of encouragement to these people.

Senator BRYAN. That is not the statement in the report here, and that is the reason why I asked you the question.

Mr. WALDRON. They were men with the uniform of the Army on.

Senator BRYAN. John Jay Knox, commissioner of the Freedmen's Savings & Trust Co., in his annual report of December 14, 1881, makes this statement:

The Government has assumed a quasi moral responsibility to the beneficiaries of this trust in the first place by the incorporation of the company without proper safeguards, and consequently by permitting its own agents—the officers of the late Bureau of Refugees, Freedmen, and Abandoned Lands—to act as the agents of the company, thus leading the inexperienced and ignorant freedmen to regard it in the light of a Government institution and as such to commit their earnings to its keeping.

Mr. WALDRON. That is true, so far as I know.

Senator BRYAN. I wanted to know if you had found that to be true in your experience with people who would know?

Mr. WALDRON. Almost invariably they thought they were depositing not only through the agents but with the Government, that Uncle Sam, as they called him, was responsible for their money, and that he was receiving it. I do not think in all my years in connection with the matter I have found half a dozen people who knew differently.

Senator OVERMAN. Do you know how many depositors there are now living?

Mr. WALDRON. I do not know.

Senator BRYAN. How many pass books are out?

Mr. WALDRON. I do not know. I think most of them are out. Some have been assigned of course.

Senator OVERMAN. In fact most of them have been assigned?

Mr. WALDRON. I do not think they have, because I do not think they regarded it as of sufficient value to give anything for them.

Senator OVERMAN. Have not pass books been assigned to people in Washington who expect to get this money?

Mr. WALDRON. I have never heard of it.

Senator BRYAN. Take Jacksonville, for instance. Was there not a bank there presided over by Mr. Greeley that just bought up all the pass books they could get, and for practically nothing?

Mr. WALDRON. I remember, Senator, that there was an effort made, but from the pulpits in Jacksonville, and indeed, all through Florida we advised the people not to dispose of them.

Senator BRYAN. There was a bank there called the Dime Savings Bank.

Mr. WALDRON. I remember the bank.

Senator BRYAN. Did not that bank make an effort to get in all the claims?

Mr. WALDRON. They made the effort, but I do not think they were very successful.

Senator BRYAN. It was my impression that they were successful, and I thought you would know.

Mr. WALDRON. We made a special effort to keep them from doing it.

Senator BRYAN. When did you go down there?

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Mr. WALDRON. The Dime Savings Bank failed before the fire.

Senator BRYAN. Long before.

Mr. WALDRON. I was there fifteen and a half years. I was there when they were making the effort to buy the books.

Senator BRYAN. What year did you go there?

Mr. WALDRON. If my memory serves me, it was early in the nineties.

Senator BRYAN. That was too late.

Mr. WALDRON. I know I preached repeatedly concerning the matter.

Senator BRYAN. It may be that it was in existence in the early nineties.

Mr. WALDRON. It failed the year I went there.

I simply want to add that Mr. White has been engaged in this work to try to get this appropriation for, now, 20 years, and, as he says, there is no fund. The people who have the pass books do not feel that there is enough in it to employ a lawyer, and it has really been a work of charity with him. He has kept at the work and is more thoroughly acquainted with it than anyone else.

I want to say further that I look upon it as a very urgent thing, because the people to whom the money is due are almost all of them very poor, and many of them are in need. Then the Government has, in one way and another, paid 62 per cent, and they have allowed these depositors to wait all these years—nearly 48 years—for the remainder, and it would seem when they have waited so long they ought to be paid.

Then I look upon it, just as the report did, that the honor of the Government is at stake. I think that the honor of the Government is certainly worth the million and odd-hundred thousand dollars required to pay it.

Then it will go into the hands of people who will need to spend it for subsistence, and it will go into the hands of people who are mostly in the South, because most poor people live in the South and these branch banks were established in the South. I do not know that there was a single one established anywhere outside of the South except in the District of Columbia.

Mr. WHITE. There were three outside.

Mr. WALDRON. There were three outside of the South. Those things, it seems to me, would show that it was urgent and ought to go in this bill.

The last thing I want to say is that unless the matter is attended to very soon it will go by default, and these people, who need the money, who ought to have it, will never get it. We will never be able to get money enough to employ a lawyer to attend to it. Our churches have repeatedly helped Rev. Mr. White when he would preach for them. Large numbers of delegations have gone to various places, and the expenses have been very high, more than we ought to be called upon to bear.

For those reasons I hope that it may please you, gentlemen, to incorporate the amendment in the urgent deficiency bill and let these people have their money and let the honor of the Government be sustained.

I want to thank you.

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ADDITIONAL STATEMENT OF REV. JAMES L. WHITE.

Mr. WHITE. Just one word, Mr. Chairman. I was in North Carolina until 1884, during the period of the Freedman's Bank, and in the bank the officers who got this money most of them had straps on; they were soldiers, United States officers. I know that personally.

Senator PERKINS. Did you not have a letter or a statement from Gen. Howard on the subject?

Mr. WHITE. I did have it, but lost it.

In 1863 Freedman's bureaus were established in all States where there was slavery in 1860. These bureaus acted as agents for the ex-slaves, and settled accounts between the ex-slaves and their former masters, and also acted as agents for the Freedman's Bank. When the Freedman's bureaus were discontinued in 1867, Gen. Howard was made commissioner of the Freedman's Bureau, and the funds held by the bureau were turned over to him and were afterwards repaid into the Treasury. The bank was changed to a trust company in March, 1865, but before that it was a bank.

It was a good purpose because the people did not know how to save their money. The report shows that officers of the Army, soldiers, were commissioned by the Secretary of War through the direction of the President to get the colored people's money and teach them how to save. The Government officers acted as the agents for the Freedman's Savings & Trust Co. The report shows that.

Senator OVERMAN. We will take up the matter and consider it.

Mr. WHITE. I thank you, gentlemen, very much. Have you a copy of the House hearings on this subject?

Senator OVERMAN. Yes; we have it.

(Thereupon, at 12 o'clock and 40 minutes p. m., the hearings were closed.)

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APPENDIX A.

WASHINGTON, D. C., *September 12, 1913.*

Hon. T. S. MARTIN,
Chairman Appropriations Committee,
United States Senate, Washington, D. C.

DEAR MR. MARTIN: Referring to the urgent deficiency bill containing a provision for the abolition of the Commerce Court, I have to request that the shippers whom I have the honor to represent be heard in respect thereto. I am compelled to leave to-day for Galveston to try some cases; and should it be necessary to conclude the hearings before my return (about Oct. 1), I trust you will arrange to have incorporated in the hearings my remarks in respect to H. R. 26680, January 6, 1913, appearing at pages 14–48 and 59–64 of the printed hearings before the subcommittee of the Committee on Appropriations of the Senate. For convenience I am inclosing copy of the hearing.

If the committee shall accede to my request to be heard, may I ask that you advise me as early as possible the date fixed?

Yours, very truly,

JOHN B. DAISH.

(The matter referred to, in hearings before the subcommittee of the Committee on Appropriations January 6, 1913, is as follows:)

STATEMENT OF JOHN B. DAISH, ESQ.

Mr. DAISH. My office is in the Hibbs Building, in the city of Washington. While the exact question before this committee at this moment is whether or not the Commerce Court shall be continued as a part of our judicial machinery, and incidentally to that, whether or not there shall be an appropriation for the maintenance of the court, I think it is of advantage that the committee should be informed concerning the various phases of this court.

I direct the attention of the committee first to the fact that every argument and every consideration that moved the appropriate committees in 1910 and prior thereto, and which crystallized in 1910 in the establishment of a special transportation court, are, or at least ought to be, as cogent now as they were at that time.

Without going into those various arguments which were then advanced, we should yet remember that they are still in force and effect, and we must speak frankly and plainly here. We all must admit that the court has been the subject of some criticism, both for its official acts referred to a few moments ago and for some unofficial acts. We must all take notice of those unofficial acts, because that subject is now before the Senate. As to the official acts of the court, the question comes solely to one of jurisdiction.

Anyone who is unfamiliar with the act of June 18, 1910, creating the Commerce Court, would naturally think that where the jurisdic-

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tion of the court was put down, as it is, under four different headings, it would be clear enough. Such, however, is not the case. It has taken several cases in the Supreme Court to mark the limitations of the jurisdiction of the Commerce Court. That is invariably so with a new court, either because the judges shrink or the court as a whole shrinks from going the limits to which it thinks it ought to go, or else because it goes beyond the limit, reading into the statute something which is not particularly there. That is the case with the Commerce Court.

The CHAIRMAN. You think the latter of your propositions applies to this case?

Mr. DAISH. Yes. If you take the several cases, you will find that the Commerce Court first attempted to take jurisdiction of a so-called negative order; second, it attempted in a minor way—or perhaps in a major way—to go a little too far with and tore to pieces a little too much an order and opinion of the commission.

The Supreme Court of the United States has been in existence many, many years, and yet the jurisdiction of that court itself is not to-day fixed and determined. Within three weeks I have argued a case in the Supreme Court of the United States involving the jurisdiction of that court, my adversary thinking the court had jurisdiction, and I thinking it had not. The court has not decided it yet. I simply cite that to show that the question of the power of a court is never ultimately determined.

Now we come for a moment to the error of trying to take jurisdiction over so-called negative orders. We are all familiar with the Procter & Gamble case and with the decision of that case by the Supreme Court. I think I am correct in saying that with the decision of that case by the Supreme Court some 8 or 10 cases fell. I know I had 3 myself.

The third proposition is whether or not this committee should recommend to the Senate, and the Senate and House should provide the necessary appropriation.

The CHAIRMAN. May I interrupt you here?

Mr. DAISH. Certainly.

The CHAIRMAN. I think you had better proceed, bearing in mind the fact that at the last session this subcommittee recommended favorably to the full committee the continuance of this court, and the full committee recommended to the Senate that the Senate cut it out. Finally, at the end of the conference, they provided for the judges themselves, who were cut out on the Senate side, and then, as you will notice, in the conference the expenses of the court were provided for only until the 4th of March.

Mr. DAISH. Yes.

The CHAIRMAN. Now, if this bill should contain the appropriations for the court, it would naturally take them from the 1st of next July until July 1, 1914. There would still then have to be another appropriation, in a deficiency bill or somewhere, to provide for the time intervening between March 4 and July 1, 1913. I make this statement so that you may have in mind the difficulties of securing legislation.

Mr. DAISH. Yes, I was coming directly to that point, after stating that in my humble judgment the court is justified, and the appropriation for it is justified on three grounds: First, uniformity of

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decisions; second, quickness of decisions; and third, the saving in expense, and that third point is the one to which the Senator has directed my attention.

Without having accurate figures before me I assume that we must pay the judges. They are judges for life, and they must be paid. The question then remains of rent, clerk hire, and the pay of marshals, bailiffs, etc. I think that amount is in the neighborhood of $20,000.

The CHAIRMAN. The estimate of the department, including the expense allowance for judges at the rate of $1,500 per annum each, is $54,500, of which $35,000 is for rent, pay of bailiffs, etc.

Mr. DAISH. I have been told that they turned back from the previous appropriation a considerable amount of money, and that the net amount is in the neighborhood of $20,000.

The CHAIRMAN. Suppose I give you these items, so that you may have them in mind as you go along. They have estimated here:

The following provision was made for the Commerce Court for 1913 and is omitted from House bill:

Commerce Court: For the following until and including March fourth, nineteen hundred and thirteen, namely: Clerk, at the rate of $4,000 per annum; deputy clerk, at the rate of $2,500 per annum; marshal, at the rate of $3,000 per annum; deputy marshal, at the rate of $2,500 per annum; for rent of necessary quarters in Washington, District of Columbia, and elsewhere, and furnishing same for the Commerce Court; for books, periodicals, stationery, printing and binding; for pay of bailiffs and all other necessary employees at the seat of government and elsewhere, not otherwise specifically provided for, and for such other miscellaneous expenses as may be approved by the presiding judge, $33,888.89; in all, $42,022.22.

The following is estimated for 1914 for the Commerce Court and omitted from House bill:

Expense allowance for judges, at rate of $1,500 per annum each	$7,500
Clerk	4,000
Deputy clerk	2,500
Marshal	3,000
Deputy marshal	2,500
For rent of necessary quarters in Washington, D. C., and elsewhere, and furnishing same for the United States Commerce Court; for books, periodicals, stationery, printing, and binding; for pay of bailiffs and all other necessary employees at the seat of government and elsewhere, not elsewhere specifically provided for, and for such other miscellaneous expenses as may be approved by the presiding judge	35,000
Total	54,500

That, of course, is outside of the pay of the judges.

Mr. DAISH. Yes. Let us assume that it is $54,500, and that none of it is turned back. I may have received erroneous information in regard to that. Since we are on the question whether or not money will be saved, what must be done in case the court is not continued and this litigation is sent back to the district courts?

The CHAIRMAN. I should like to have you elaborate that.

Mr. DAISH. You must remember that I am not in the Government service and am simply an attorney practicing occasionally, as often as I have the honor to represent clients before the commission and elsewhere. Therefore I can not speak by the card; but under the existing law wherever and whenever a case is filed against an order of the Interstate Commerce Commission there are two sets of lawyers in addition to those for the complainant, namely, those representing the United States, coming out of the office of the Attorney General, and second, those from the Interstate Commerce Commission.

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The Attorney General has, I think, three, certainly two, whose exact titles I can not name at the moment.

The Interstate Commerce Commission has a solicitor and a deputy solicitor. If the amount of litigation in the future should anywhere nearly equal its volume in the past, those four attorneys could not possibly attend to the business if it was taken, as it would be, to the various district courts all over the United States. It would necessitate, I fancy, at least one additional representative of the Interstate Commerce Commission and another representative of the Department of Justice. Each of these would require a stenographer probably and perhaps a law clerk. Then those six attorneys must of necessity go to various parts of the United States for the purpose of trying cases. This additional expense will, I think, very closely approximate, even if it does not exceed, any amount that has been required in the past for rent of the quarters of the Commerce Court and for the clerks and marshals. Perhaps there would be required additional clerks and marshals in the various districts.

The question then comes whether Congress shall appropriate for these employees of the Commerce Court on the one hand or appropriate for additional solicitors, law clerks, and traveling expenses, including the traveling expenses of those already employed, to go to the various districts to defend these various cases.

The CHAIRMAN. Do you maintain, then, that as a matter of economy, so far as expense alone is concerned, it is not desirable to cut this out?

Mr. DAISH. It is by no means a matter of economy to cut out the court.

The CHAIRMAN. Of course you will observe that appropriations already made for the representatives of the Department of Justice and of the Commerce Court will not be increased, but you think that eventually those appropriations would have to be increased?

Mr. DAISH. Eventually they certainly would require it. The present number of cases in the Commerce Court is in the seventies. Let us say there are 35 cases a year. Now, spread those over the various districts of the United States, as they well might be, and with good grace, too. They must be properly defended. I have seen these cases defended by the district attorney's office. It might come about that the district attorney at Chicago, Mr. Wilkinson, might need another man. It might not be a man directly in the office of the Attorney General; but the Department of Justice now has those two men, and I am reasonably confident that those two could not do the business and go from district to district as occasion would require. As a matter of economy, I think, not attempting, as I say, to speak by the card, because I do not know the exact figures, the Commerce Court would be the cheaper of the two propositions.

The CHAIRMAN. If you care to answer the question, do you think the Commerce Court is more or less competent as a court to consider those questions than the various district courts?

Mr. DAISH. I should like to answer that by an illustration.

The CHAIRMAN. That is a matter that is constantly at issue in debating this question.

Mr. DAISH. In this transportation practice we meet these situations. I have had occasion to be before district judges, and I have had occasion to be before new State railroad commissions. I have also had

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occasion to be before the Commerce Court, and also before the Interstate Commerce Commission. I speak, of course, with no disrespect when I say it is a question of the education of the judge.

The CHAIRMAN. We want the cold facts.

Mr. DAISH. I recently argued a case before a new State railroad commission. The cold facts are these: I was told by one of the commissioners and also by the general counsel of the commission that I must commence at the bottom. Although it was apparently a simple case I had to commence at the bottom. It would have been a simple case to anyone at all versed in transportation facts or transportation law. We have in our practice what is called the "lingo of the yard." We use those words which a railroad man uses; and when you go before one who does not understand the technical meaning of those terms it is necessary to define and explain them as you go along.

I happen to think of one expression, "proportional rate." If one has not had some experience in railroad transportation or does not know something about rates, or if he has his mind befogged with patents or admiralty or law or equity, he does not know what you mean.

The CHAIRMAN. He does not know what "differential" means?

Mr. DAISH. No; and there are lots of them who do not know what that word means. These terms constantly come up. Their meaning is accurately understood by a man who is well versed. The district judges and the former circuit judges, as we all know, had all sorts of things coming before them. The net result is that when you bring before one of these judges some technical matter he has to spend a long time and take lots of advice and lots of judicial notice to understand what you are talking about. You require more time to make the explanation.

On the other hand, the minute one starts before the Interstate Commerce Commission and says "this is a proportional rate," no explanation is required. They know just what you mean. So it is at the present time with the Commerce Court, and will necessarily be so to a greater degree as time goes on, because they familiarize themselves with these different terms and understand what is meant by them. Those, in my judgment, are the cold facts and the results of my experience. In the particular case to which I just referred, it was necessary to take an hour and a half in order to convey to the understanding of that particular commission what we were talking about.

The CHAIRMAN. You had to go over all the elementary work?

Mr. DAISH. We had to commence at the bottom and then come up.

Senator WETMORE. That being a new commission, you had to interpret the terms?

Mr. DAISH. Being a new commission, the order in that case was the first order they had ever issued, although it was not the first case they had heard.

To illustrate still further: I was called upon to do something in that case that I was never called upon to do before in a transportation case, namely, to write the order in the case. The Interstate Commerce Commission prepares its own orders. The lawyers do not write them.

The CHAIRMAN. You are not prepared to condemn that?

Mr. DAISH. Yes; I am prepared to condemn it for this reason, if you care to hear it, that I drafted the order and presented it to another

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gentleman and he did not like it and he managed to change it, and the commission signed it in its changed form and we may have some trouble about its phraseology.

The CHAIRMAN. It left out the joker, did it?

Mr. DAISH. I think it put a joker in, Senator. Let me say this, that I find by reading this morning's copy of the New York Journal of Commerce that that paper has taken a poll of the Federal judges to see whether or not they want this jurisdiction returned to the Federal courts; that is, to see whether they want this interstate-commerce litigation.

The CHAIRMAN. Are you prepared to say whether that poll was taken by some one acquainted with the circumstances, or by some reporter who just snatched it off the elevator or somewhere?

Mr. DAISH. No; this is in response to letters from judges all over the country.

The CHAIRMAN. Is it carefully taken?

Mr. DAISH. Is carefully taken.

The CHAIRMAN. I wanted to know about that, because the value of it would depend upon the care with which it was taken.

Senator WETMORE. Do they quote the judges?

Mr. DAISH. They do.

Senator WETMORE. Is the language of the judges quoted?

Mr. DAISH. They quote the language of the judges, or a number of them. I ask your particular attention to this.

The CHAIRMAN. Is it brief enough to be included in the record?

Mr. DAISH. Yes.

The CHAIRMAN. Please include it.

Mr. DAISH. You will notice that the opinions of some of these judges are quoted in full.

Senator WETMORE. Have you read their opinions as expressed in this article?

Mr. DAISH. Yes.

Senator WETMORE. What is the subject of them, pro and con?

Mr. DAISH. There is only one man against it, and he does not want his name used. They all say substantially that their dockets are full.

Senator WETMORE. Do you know who the man is who does not want his name used?

Mr. DAISH. No; I do not.

Senator WETMORE. He ought to be "fired out of the brush."

Mr. DAISH. I fancy his name could be obtained confidentially. I do not know. They say first "my docket is full"; second, "I have everything on earth before me. I do not know anything about the matter. You had better have these men who understand the 'lingo of the yard' take care of these matters and not throw them down on us, because we have plenty of other things to attend to." Of course I am using my own language in giving this résumé.

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(The article is as follows:)

FEDERAL JUDGES FOR COMMERCE COURT—BENCH LARGELY IN FAVOR OF KEEPING BODY.

Result of general canvass of judges—Views of many capable jurists—Some unwilling to take sides but tell condition of docket.

[From our own special correspondent.]

WASHINGTON, *January 5.*

Federal judges are very widely of the opinion that President Taft was correct in creating the Commerce Court and that Congress is unwise in attempting to abolish that bench. Your correspondent addressed letters to all the members of the Federal courts, soliciting their opinions on the Commerce Court, and only one reply was directly unfavorable to that body.

Judge Jacob Triever, of Little Rock, district judge of the eatsern district of Arkansas, said:

"The condition of my docket is such that the court can not give the proper attention to cases arising out of the rulings of the Interstate Commerce Commission without detriment to speedy decisions in matters now properly belonging to it.

"I am of the opinion that the jurisdiction now vested in the Commerce Court should not be returned to the district courts. Not only does the crowded condition of the dockets of the district courts prevent that careful consideration of the cases arising by reason of the rulings of the Interstate Commerce Commission, but frequently the questions of law involved in these cases are so complicated that a judge who is compelled to determine the many principles of law arising in other cases pending in his court—criminal, common law, equity, bankruptcy, admiralty, patent, and copyright cases, and violations of the many acts lately enacted by Congress relating to the safety appliances of railroads, limitation of hours, quarantine of cattle, and others—is unable to devote as much time to the consideration of these questions as their importance demands, while, on the other hand, a special tribunal charged with the determination of such cases only can give them more careful consideration and in a short time will acquire much greater knowledge of that branch of the law than judges of a court who are only occasionally called upon to decide such cases.

"This statement is based upon experience, having had a number of cases involving the railroad rates of this State and, before the Court of Commerce was established, cases to review orders of the Interstate Commerce Commission.

"In my opinion it would be advisable to extend the jurisdiction of the Commerce Court so that it could review questions of law involved in negative orders of the Interstate Commerce Commission, but findings of facts made on conflicting testimony should not be subject to such review."

District Judge John E. McCall, of Memphis, Tenn., holds practically the same opinion. He said:

"My docket is in such a condition that I could not give proper attention to cases arising out of the rulings of the Interstate Commerce Commission without detriment to quick decisions in matters properly belonging to it.

"I do not think the jurisdiction now vested in the Commerce Court should be returned to the district court.

"I am of the opinion that such jurisdiction should be given to the Commerce Court as would enable it to review the law involved in negative orders of the Interstate Commerce Commission.

"I am prompted to make these responses to your inquiries because I believe that the members of a court selected as the members of the Commerce Court are will be more competent to pass upon matters arising out of rate litigation than the district judges who, comparatively, would have but little of this character of work, and are therefore not as familiar with the details of rate making as judges would be who are especially selected because of their fitness.

"Nor have the district courts time to go into these investigations with that thoroughness which is demanded without greatly delaying their work along other lines.

"Briefly, I believe in the continuation of the Commerce Court, and that it should be given such jurisdiction as is necessary to accomplish the purpose for which it was created."

Judge George W. Ray, of Norwich, N. Y., said:

"The condition of my docket in the northern district is such that I have no trouble by giving substantially constant attention to the discharge of my duties in keeping the work up. The judge of the northern district, if industrious, can attend to all the business, including the cases to which you refer.

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"I am in favor of the Commerce Court, however, as I think better work will be done if these matters are left to one court with abundance of time at its disposal."

District Judge Arthur L. Sanborn, of Madison, Wis., also said that his docket is not too crowded to take care of the Commerce Court cases, but he is of the opinion that the court should be continued and given added jurisdiction to review the law in negative orders of the Interstate Commerce Commission.

District Judge Benjamin F. Keller, of Charleston, W. Va., said he has had little experience with interstate-commerce litigation and therefore could not express an opinion. However, he said he is in favor of creating a special court for the adjudication of patent cases.

Judge Chatfield, of Brooklyn, N. Y., said he does not feel competent to express an opinion, but "I can say that the dockets in this district are in such condition that it is possible to dispose of any case which will come before the court; while at the same time there is sufficient work so that additional jurisdiction is not needed to keep the court busy."

Judge Hand, of New York, said that he does not feel competent of expressing an opinion, but "our dockets are crowded and we have about all we can do to give prompt decision to the cases as they are."

Circuit Judge Don A. Pardee, of New Orleans, also refused to express an opinion on the court. However, he said: "In some district courts in the fifth circuit the docket is sometimes crowded with general police business."

Another circuit judge, who does not desire to have his name mentioned, said: "I am strongly of opinion that it was very wise to create the Commerce Court and that it would be most unwise to abolish it. It is a wholly insufficient reason for abolishing a court that once in a while its decisions are not concurred in by an appellate tribunal. Judges, not being infallible, must sometimes err, and any rule which calls for abolishment of a court because it may have erred in some decision would necessarily lead to the destruction of every court."

One other judge, who does not desire to have his name mentioned, replied that although his docket is not crowded he believes the Commerce Court should be continued and that its jurisdiction should be extended.

E. E. Marvin, clerk of the Federal court at Hartford, Conn., replying for Judge Platt, who is sick, said: "We are in no shape at present to take on any more business of any kind."

Judge T. S. Maxey, of Austin, Tex., refused to express an opinion owing to the fact that a controversy over the court is pending in Congress. A similar reply was made by Judge William H. Pope, of Santa Fe, N. Mex., and Judge E. S. Farrington, of Carson City, Nev. Judge Walter H. Sanborn, of St. Paul, Minn., also refused to state his opinion in the absence of a request from a legislative department.

The one answer unfavorable to the court was received from a prominent eastern judge, who for obvious reasons requested that his name be withheld. He said:

"I think the Commerce Court should be abolished, because all special courts created for the elucidation of a single statute or the consideration of one narrow range of cases are wrong in principle. I even venture to think that Mr. Taft's adherence to his opposed theory in insisting on the creation of the Commerce Court and the Court of Customs Appeals seriously diminished his reputation as a lawyer among other lawyers of experience. All such tribunals naturally seek to magnify their importance; they tend to become narrow and under our system of government are sure to fall into contest with the legislative authorities. They naturally seek by construction to enlarge their jurisdiction, and this frequently brings them into contest with the Executive as well.

"Again, as a matter of policy, there can be no such thing as any review of the rulings of any commission now held in this country without exciting a great deal of odium and hatred. It was a mistake to concentrate this feeling in one court and in one place. Whatever is done in such matters should be done locally. More than one court should be invoked for the purpose of construction, and only when local rulings become irreconcilable should a review by the Supreme Court be invoked."

Further in his letter this judge continued:

"Both our State and Federal Governments are now embarked on the experiment of regulation by commission. It is an interesting, yet legitimate extension of Democratic and Republican ideas; it ought to be fully and fairly tried out, and any interference therewith by the courts prevents this. I do not think that negative orders or mere refusal to act by the Interstate Commerce Commission should be reviewable in any court, nor should any order or decision of that commission be reviewable anywhere, except upon the ground that the order complained of actively violates the legal or constitutional rights of some particular person or party who complains thereof."

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Mr. DAISH. In the Annual Financial and Commercial Section of the Journal of Commerce of to-day an eminent circuit judge published an article on this subject.

The CHAIRMAN. We should like not only the article you refer to in this record, but your opinion of it.

Mr. DAISH. Having read this article, I will say that is a comprehensive history of the Commerce Court and its work; it is apparently accurate and meets with my approval. I ask that it be incorporated in the record.

(The article is as follows:)

[Annual Financial and Commercial Section, New York Journal of Commerce, Jan. 6, 1913.]

COMMERCE COURT IS A NECESSITY.

REASONS FOR ITS CREATION—MISUNDERSTANDING OF ITS OPERATION—ASSUMED TO POSSESS A JURISDICTION NOT PREVIOUSLY BELONGING TO A FEDERAL COURT.

[By an eminent circuit court judge.]

The Federal courts in the various districts and circuits of the United States are occupied for the most part with miscellaneous cases of the same general character as those litigated in the several State courts. They deal with the same class of questions and apply the local law of the States, as well as follow the local procedure, when not inconsistent with the acts of Congress or the general law of the land.

Nor is it of serious consequence that these local laws vary greatly in different States, even in those which adjoin each other. For example, the laws relating to the political status of the citizens, such as the qualifications of a voter or office holder, the manner of filling offices, whether by appointment or election, the tenure of office, compensation of officials, etc., may vary greatly in neighboring States without any special inconvenience to the public. In like manner the laws relating to ordinary property rights, such as rates of interest, distribution of estate in cases of intestacy, rights of alienation by gift or conveyance or by will, etc., may be very unlike as between different States without any noticeable degree of public disadvantage. In respect of all such matters, which are involved in litigation, conflicting laws and diverse rulings of the courts, of which there are endless instances, give rise to little practical difficulty. And this is to be kept in mind in connection with the statement made above that the Federal courts generally are engaged in hearing the same sorts of cases as are the State courts in the several States. The circumstances of diverse citizenship or the claim that a Federal question is involved gives the United States courts concurrent jurisdiction.

But when it comes to cases involving questions of national import, such as questions arising under the interstate-commerce laws, including the safety appliance and hours of service laws, the antitrust law, patent laws, and the like, there is the greatest need of uniformity of decision. To have a question which concerns the public everywhere decided one way in one district and another way in another district is most unsatisfactory and unfortunate. It results in uncertainty and confusion, to say nothing of the delay which must occur until the question can be finally decided by the Supreme Court.

This is especially true of questions arising under the act to regulate commerce, which involves the meaning and application of its various provisions and the authority which the commission may exercise under its delegated powers. For it must be remembered that questions of this sort go far beyond the rights or interests of individuals and affect on the one hand the rights of great railway systems and on the other the interest of large numbers of shippers and important sections of the whole country. In fact, it is a matter of special importance to the whole country that questions of this kind be passed upon as speedily as possible by one tribunal from whose decisions a direct appeal can be taken to the court of last resort.

It is therefore highly desirable and almost necessary that all suits brought to set aside orders of the commission should be concentrated in one Federal court instead of being scattered throughout the United States as they were under the former law. Indeed, if we were to return to the old method of procedure, these cases would now have to be brought in the district courts, where formerly they were brought in the circuit courts, thus causing even a larger distribution over the country.

As the cases are now brought in the Commerce Court it is not infrequent that several cases are heard as one. Thus in the Water Carrier cases four cases were heard

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together, making one record; the Tap Line cases were heard together and also the six Pipe Line cases. Had these cases been brought in the district courts, they would undoubtedly have been brought in different districts, most of the lines running through several districts, and the carrier could choose the district in which the suit should be brought. This would be done by the carriers in order (1) to select a favorite judge, or (2) to have the chance of securing at least one favorable decision. To have one Federal court with exclusive jurisdiction in this class of cases results in intelligent consideration, uniformity of decision, and the greatest possible expedition. Incidentally it also serves to relieve the other Federal courts from the burden, sometimes very severe, of this class of litigation. The judges of such a court become familiar with the questions involved and can decide them with clearer understanding and less delay than would be practicable if these cases were brought in the various districts and tried by judges without special experience and crowded with miscellaneous work.

The creation of the Commerce Court has brought about these desirable results. The figures show this beyond question or doubt. When this court was organized in February, 1911, there were transferred to it from the various circuit courts 36 cases which had not been tried. That is to say, there were then 36 untried cases scattered throughout the United States, all of which, or most of which, had been brought within the previous two years. And this is exclusive of those brought during the same period which had been tried and decided, some of which had been appealed and were then pending in the Supreme Court. Since that time 52 cases have been brought originally in the Commerce Court, and the total number now pending in that court, remaining from the 36 previously brought and the 52 since brought, is only 11. This of itself shows how the Commerce Court has cleaned up all the old business and the dispatch with which it has handled both old and new suits. A notable instance of expedition is the "Intermountain cases," so called, which attracted much attention. They were begun in October of last year, heard and decided by the Commerce Court in December, and finally submitted to the Supreme Court in February, only about four months after they were commenced. And it is practically certain that no instance can be found where a case of such great importance and difficulty has passed through the courts in so short a time. In short, the Commerce Court is doing just the work for which it was organized, and doing it with thoroughness and dispatch.

JURISDICTION OF THE COMMERCE COURT.

In some quarters it seems to be assumed that the Commerce Court possesses or exercises jurisdiction not previously belonging to the Federal courts, but there is not the slightest foundation for such an assumption. Not only does the law creating the Commerce Court explicitly declare that it shall have no greater jurisdiction than was vested in the circuit courts, but the Commerce Court itself has frequently so held and rendered its decision accordingly. It is beyond dispute that the Commerce Court has not attempted to exert any authority whatever which the circuit courts did not freely assume and exert before the Commerce Court was created.

Nor has its creation operated to invite suits of this character or increase their number. No suits have been brought in the Commerce Court which would not have been brought in the circuit courts under the former law, and the circuit courts would have had precisely the same power that the Commerce Court possesses. Of course, what decisions would have been rendered by the various circuit courts in the cases heard by the Commerce Court is only a matter of conjecture. The record of cases decided indicates that the Commerce Court has much more generally sustained the commission than did the circuit courts, although it is obvious that there is no reliable measure of comparison and that justice can not be reduced to a numerical basis. In this connection it appears that the Commerce Court has granted preliminary injunctions in only seven cases altogether, and several of these cases were cases in which the commission itself was divided upon the questions involved.

COMMERCE COURT DECIDES ONLY QUESTIONS OF LAW.

The charge that the Commerce Court has assumed to review questions of disputed fact, and so attempted to make itself a sort of superior commission, is entirely unfounded. It has decided no case except upon questions of law that were clearly involved. The general question in every case, broadly speaking, is the power of the commission to make the order sought to be set aside. This is the law as settled by the Supreme Court and as the Commerce Court has frequently declared. Indeed, the constant effort of the judges of the Commerce Court is to apply to the cases before them the principles announced by the Supreme Court, and it is believed that no decision has been rendered which does not clearly indicate this effort and intention.

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In the Proc.er & Gamble case the Commerce Court held that it had jurisdiction over an order of the commission which was against the complaining shipper and in favor of the railroad. The view of the court was that when the commission denied the relief prayed for by the shipper, even though the denial of such relief was couched in negative form, the practical effect was to impose upon the shipper a charge which he might object to in a court, and that although negative in form such an order became affirmative in fact as against the shipper and just as effectually deprived him of his money as it could have done if it had been couched in affirmative language compelling him to obey the rule of the carrier.

The Supreme Court reversed the Commerce Court as to the jurisdictional question and held that the latter court had authority only to enforce or restrain affirmative orders of the commission. The effect of the ruling of the Supreme Court is to permit the Commerce Court to set aside an order of the commission against a railroad, but leaves the court without power to deal with an order which is against the shipper. This is manifestly unfair, and the law ought to be at once amended so as to confer this jurisdiction upon the Commerce Court.

It is interesting to note that the Commerce Court has been obliged, under authority of the Proctor & Gamble case, to dismiss 14 cases brought by shippers asking relief from orders rendered against them by the commission. Naturally, there would not be many cases of this kind, because the refusal to sustain the shippers' complaint would ordinarily be based upon questions of fact, the determination of which by the commission is binding on the courts.

It is difficult to account for the general misapprehension as to the attitude of the Commerce Court toward the orders of the commission and the belief that it has interfered with the rate-making power of the commission. Some explanation may be found in the fact that the claims originally made by the Government and the commission as to the conclusiveness of the commission's orders have not been sustained by the Supreme Court. It is, of course, the duty of the Commerce Court to apply the principles of law laid down by the Supreme Court, even though in doing so it rules against contentions made in support of the commission's orders. This will be clearly seen by reference to the case of Interstate Commerce Commission *v.* Union Pacific Railroad et al., decided in January, 1912 (222 U. S., 541), which construes the present law in this regard and finds the various grounds upon which an order of the commission may be set aside.

In point of fact it happens that the Commerce Court has granted but one temporary injunction in what may be called a rate case and only two permanent injunctions in cases of that character. The one case of temporary injunction was in the Florida East Coast Railway case, which involved a distinct and novel question of constitutional right, and the injunction was granted in that case on condition that the railroad company give a bond in the penalty of $100,000 to repay to every shipper the difference between what may be collected pending the suit and what would have been paid under the commission's order if that order is finally sustained. As to the two permanent injunctions, that in the Lemon case was so clearly required by a decision of the Supreme Court that no appeal was taken. Instead, the commission reopened the case, had a further hearing, and made a new order. The Commerce Court denied an application for a temporary injunction against the last order. In the Louisville & Nashville Railroad case a permanent injunction was granted on the ground that there was no substantial evidence to sustain the commission's conclusion, a principle which the Supreme Court clearly announced in the case above cited. All the other cases where injunctions have been granted, either temporary or permanent, are cases which do not involve primarily or in any important degree the question of rates, but do involve the construction of the law and the authority of the commission in respect to other matters. For example, the Switching cases presented the legal question whether a railroad may make a small charge, admitted to be reasonable if any charge can be made, for delivering carload traffic over a spur track to the private warehouse of the consignee, as against the charge for delivering a car on a team track which would involve drayage to the place of business of the consignee.

The Locomotive Fuel case involved the question whether a railroad could carry coal for the locomotive use of another railroad at a lower rate than was charged on commercial coal, the reasonableness of neither rate being questioned. The case turns on whether the circumstances and conditions under which locomotive fuel coal is carried are substantially different from the circumstances and conditions under which commercial coal is carried. The Commerce Court in this case granted a temporary injunction, without passing upon the merits, to preserve the status until the question could be decided by the Supreme Court, which latter court finally sustained the commission.

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The Lighterage case involved the question whether as a matter of law undue preference could be predicated upon a contract with private persons to furnish public terminal facilities when such private persons were large shippers to and from such terminals. Apparently this question should be answered in the negative under the recent decision of the Supreme Court in the Elevator cases involving the same proposition, and it was this question which the Commerce Court reserved for final hearing, granting a preliminary injunction to maintain the existing status meanwhile. The ruling of the Commerce Court was upheld by the Supreme Court upon appeal. Another case involves the question whether a certain trolley road which sought a switch connection with a trunk line is a "lateral branch railroad" within the meaning of that provision which allows the commission to require switch connections. These and other cases illustrate the instances presenting questions of law in which a few injunctions have been granted, and it is absurd to say that the Commerce Court has interfered with or curtailed the rate-making power of the commission.

It is also to be observed that many cases before the commission are based upon rate adjustments which are alleged to favor one section of the country and place another section at disadvantage. True, the railroads and their rates are involved, but the real controversy arises out of the conflicting interests of different and competing localities. It is not so much the amount of the rate which is charged to either community as it is the relation of their respective rates to each other.

For example, the above-mentioned Intermountain cases, which have attracted much attention, are largely of this character. While the orders of the commission in these cases benefit the intermountain territory, and are highly approved by the commercial interests of that territory, they are regarded as prejudicial to the Pacific coast cities and highly disapproved by the commercial interests of those cities.

So, too, the Grain Transit cases are a contest primarily between Nashville and Atlanta, and the Commerce Court by temporary injunction, which was most earnestly sought by the commercial bodies of Nashville, simply preserved the status which has existed for a long period of years until the question could be more fully considered on final hearing. The point is that it does not follow from the granting of a temporary injunction in such cases that the court has simply rendered a decision in favor of the railroads. Apparently in these cases the interests of Nashville are more affected by the commission's order than are the interests of the carrier against which the order was made.

Indeed, it is believed to be quite within bounds to say that the critics of the Commerce Court for the most part, if not altogether, are those who have not read its decisions and who know nothing about the questions of law involved.

JUDGES ASSIGNED TO OTHER SERVICE.

It was not expected when the Commerce Court was created that under its present jurisdiction it would have business enough to keep all its members fully occupied. To begin with, 95 per cent of the orders of the commission are complied with almost as a matter of course, because there is no ground for questioning that they are clearly within the powers delegated to the commission. Indeed, it is to be assumed that a commission as able as the present one will not decide enough cases which could be reviewed with any hope of success to result in any large number of suits to enjoin its orders. It was therefore provided that the judges of the Commerce Court could be temporarily assigned for other judicial service when not engaged with Commerce Court cases, and all of its judges have done more or less judicial service in the other Federal courts, so that altogether they find constant occupation.

Under an amendment of the Erdman Act, passed early in March, 1911, Judge Knapp was appointed a mediator under that law to act in conjunction with the Commissioner of Labor, and a considerable part of his time has been occupied in efforts to settle railway labor disputes and prevent strikes by railroad employees. It is a matter of common knowledge that this important work has been carried on with great success, as is evident from the fact that no strike of any great consequence has occurred on any railroad in a number of years, and only recently the threatened strike of the engineers of the entire railroads of the East was averted by the prompt intervention of these two mediators.

From this it clearly appears that while the business of the Commerce Court proper is not of sufficient volume to keep its five judges constantly occupied, the other duties which they are eligible to perform and which they have been and are performing have provided them with ample work of a most responsible and useful character.

The expense of maintaining the Commerce Court is very moderate, amounting for the present fiscal year to less than $40,000. And this includes such items as rent for chambers, clerks, supplies, traveling expenses, etc., to the amount of $18,000, which

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would have to be incurred even if the Commerce Court were abolished. The court has provided itself with appropriate and conveniently located quarters, which have been fitted up and equipped in a suitable and substantial manner and at a total cost which is at least $20,000 less than the amount appropriated by Congress for that purpose. No further outlay of consequence will be required for many years, and the total cost of maintaining the court will therefore be the ordinary running expenses, which will probably average about the amount stated for future fiscal years.

There will be no saving of expense to the Government in case the Commerce Court is abolished. The salaries of the judges will continue, as they are circuit judges. This would leave only the salaries of the four officers and a portion of the rent to be saved. Against this saving should be charged the traveling and maintenance expense of the solicitors of the commission in going about the country to try these cases, together with a like expense on the part of the Department of Justice. The cases in the Commerce Court involve (1) an application for preliminary injunction; attorneys would have to go and argue these motions. (2) The next move would be the taking of testimony, which would be at the court in which the case is brought; this would necessitate another trip. (3) There would be the trial of the case. It would be a very moderate estimate to say that the average extra expense in attending to these cases in the district courts would be $250 each. To this expense must be added also the additional expense in records occasioned by each case being tried by itself rather than grouped, as is now done in the Commerce Court in such cases as the tap-line and pipe-line cases above cited.

It would be impossible to provide for appeals to be taken direct from the Interstate Commerce Commission to the Supreme Court, as such procedure would be unconstitutional. There must be some intermediate court, and it should be one of the greatest possible expedition. The proposition to make orders of the commission final is also unconstitutional, as the commission is an administrative body and Congress has not the power to give it finality as to questions of law involving property rights.

The CHAIRMAN. We are glad to have a statement of your opinion about this, because if this reaches a debate on the floor of the Senate we can not have too much information. We were woefully short on information on the last session except on one side, and that was entirely against the court.

Mr. DAISH. If you will pardon me for stating it frankly and plainly, the difficulty with the Commerce Court is a lack of information in respect to its decisions and in respect to the necessity for it. The layman, the shipper, and the railroad traffic manager do not know exactly what those are. It takes a lawyer to see what transpires and the necessity for it.

The CHAIRMAN. Taking it by and large, are there many lawyers who have so far practiced before this court? I ask that question because the chairman of this committee, in charge of this bill on the floor of the Senate, acknowledged that he was not a practicing lawyer, and left it for the lawyers of the Senate to take up. Of course, the lawyers in the Senate have largely dropped their law business before coming to the Senate; and with all respect to their great ability, there seemed to be an almost total lack of knowledge of the practice before the Commerce Court, and we had simply to rely upon the charter of the court and guess at the balance. We ought to have just what we are getting now and plenty of it—to hear from those who have practiced before the court, and I want you to give us what would be elementary if you were talking to a class of lawyers concerning the practice.

Mr. DAISH. Speaking first with respect to the number of those who are practicing before the Commerce Court and before the commission and who are supposed to be familiar with transportation law, substantially every one of the railroads has a lawyer in its service whose business it is to look out for this particular branch.

The CHAIRMAN. Before the Commerce Court?

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Mr. DAISH. Before the Commerce Court and the Interstate Commission.

The CHAIRMAN. More especially the Interstate Commission?

Mr. DAISH. Yes. Some of the carriers call these lawyers their commerce counsel, giving them that separate title. Then outside of the service of the corporations the number of attorneys who either make a specialty or are supposed to be versed in this branch of transportation are comparatively few. I would hate to give the number, but I think I can give it clearly out of my head, because we naturally meet each other as colleagues upon one side of a case. I think it would be safe to say that the number of well-known transportation lawyers not in corporate service in the United States to-day does not exceed 50. Those who have occasional cases would probably run up to 500.

The CHAIRMAN. If the court is continued, would that become more general, or would it be narrowed down to special men?

Mr. DAISH. It will become more general, for this reason: Some shipper files a case. He has perhaps a local lawyer. When that case is tried and won or lost, the shipper naturally feels that he wants somebody who can match the wits of the corporation attorney, and he then proceeds with the aid of his local attorney to secure an expert. By the time he is through with two or three cases the local attorney thinks he has become more or less familiar with and is to a certain extent an expert in that branch of the law. I am confident that I know of numerous instances of where just that thing has happened. I have in mind a gentleman in New York who had his first case, I should say, four or perhaps five years ago. He now has three or four cases pending before the commission and he has taken up that branch of the law. It is a good deal like the bankruptcy law. Bankruptcy lawyers say that the more you see of it the more you wanted to get into bankruptcy. So it is with the practice of transportation law.

The CHAIRMAN. In my early days in the Senate we used to hear a great deal about the bankruptcy law. It hung over us like a pall for years.

I am anxious to know what is the consensus of opinion of shippers as a whole about the continuance of this Commerce Court. What is the opinion of merchants, producers, and wholesalers and those who deal with this matter, besides the transportation companies?

Mr. DAISH. I speak frankly and tell you that as a result of letters which I have received I think I can tell you the reason for their opinions. I think it is safe to say that if a poll were taken of the larger shippers of the country at least 75 per cent would be in favor of the continuance of the Commerce Court.

The CHAIRMAN. You say "the larger shippers." Have you any reason to believe that there is a difference of opinion between the larger and smaller shippers?

Mr. DAISH. I think a poll of the smaller shippers would show a still higher per cent in favor of the retention of the Commerce Court.

The CHAIRMAN. The smaller shipper is not so apt to take a case into litigation, is he, as the larger shipper?

Mr. DAISH. Often the small shipper is better informed than the larger one, because the man doing a large business leaves this whole matter to some clerk or traffic man to look out for.

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The CHAIRMAN. What I mean to ask is, Is he as apt to go into court with his grievances as the larger shipper is?

Mr. DAISH. In the small man's case, and frequently in the large man's case, they go as an aggregation of individuals, through their board of trade or commercial club; particularly if a case concerns a locality rather than a commodity or an individual.

The CHAIRMAN. The reason I ask is that the legislative mind of this Government is constantly seeking the opinion of the smaller man and the smaller shipper. I presume because his business is smaller we do not hear as readily from him as we do from the larger man. We want your best idea as to the smaller man's opinion. You think he expresses himself through boards of trade and commercial clubs?

Mr. DAISH. There is no doubt about that. The smaller man has neither the money nor the time to come here himself, but he comes through a board of trade or commercial club or some other mercantile association, and through the appropriate committee of that organization makes his wants known.

Coming to the second part of your question, or, rather, volunteering, I am firmly convinced that those who say they are opposed to the Commerce Court are not really opposed to the court. Speaking plainly and frankly, they are opposed to it because somebody has pointed the finger of scorn at one of the members of the court.

The CHAIRMAN. You mean the judge of that court who is now on trial before the Senate?

Mr. DAISH. Yes. Except on the bench I never saw Judge Archbald; never spoke to him. Prior to the filing of certain charges against him the Commerce Court was all right in the public mind, except that it decided some cases with the carriers. Well, it had to decide with the carriers in some cases in which it did so decide, because the shippers were not there. It did not always decide with the carriers; and, as Judge Hand said—I think it is in 3 Hand, page 173—when the finger of scorn is pointed, or some one cries fraud, we all believe it without waiting for the proofs; and so it is in this case.

I have referred to the Commerce Court as an institution. Of course, I do not care to discuss the personnel. No one does. But we must remember that if some one in this room were besmirched and some one went out and said something bad of one it would gain credence; it would be said that all of us are bad; to jump at such a conclusion is the way the human mind ordinarily works; in my judgment this feature of the human mind accounts for nearly all of those who are opposed to the continuance of the Commerce Court.

Senator FOSTER. You stated that you thought about 75 per cent of the large shippers favored the retention of the Commerce Court. Have you any information or judgment as to the sentiment of the smaller shippers, or the percentage?

Mr. DAISH. I think if you could take a poll of the smaller shippers you would find that 90 per cent, at least those informed, are in favor of the continuance of the court.

Senator FOSTER. Upon what facts or data do you predicate that judgment?

Mr. DAISH. From letters I have received from time to time in writing to different people about this. Now, let me tell why I wrote

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them. It was my pleasure some six or seven years ago to urge Congress to establish a special transportation court. I am acquainted with a large number of shippers personally. I had a letter only the other day from an intimate personal friend who said, "The Commerce Court ought to be killed; you ought not to have the court." I wrote back and asked him why, and he said, "Well, I think they have got a bad man on there." I wrote him again and said, "If you lose your case before the commission, you can not go to the court. Would you prefer to have that court continued, with the prospect that at some future time you might get to that court, or would you prefer to have your case go to your particular court in Ohio?" He immediately wrote back and said, "I have given this matter consideration, and I would prefer to go before the Commerce Court, even as it is," is the way he put it, "than to be fooling with Judge So-and-so," referring to the judge in his particular district.

Senator FOSTER. Is it not one great complaint of the shippers and the public that the old system delayed the trial of these cases?

Mr. DAISH. There is no doubt about that.

Senator FOSTER. Is it a fact or not that the Commerce Court expedites the trials of these cases?

Mr. DAISH. It is a fact. The question was asked of Mr. Walter, and he produced a statement from Appendix 34 of the report of the Attorney General, which has been incorporated in this record, which shows the time it has taken to try a number of cases. I think I am correct in giving the time. Recollect that when a case is brought out in a circuit the expediting act is usually made to apply. That requires three judges. I think that in the Union Stock Yards case it took about nine months to get three judges together to hear the case. I think I am correct in that statement of the time. Am I correct about that, Mr. Walter?

Mr. WALTER. I think so.

Mr. DAISH. I know I wanted three judges in the city of Chicago three years ago and it was almost impossible to get them, and we had to wait some two months. Now, the Commerce Court is open every day. The judges are here, or enough of them to take cognizance of any matter that is brought to their attention. As Mr. Walter has already pointed out, the average time before the Commerce Court in 6 cases was 9 months, and the average time in the circuit court was over 21 months.

Senator WETMORE. In how many cases?

Mr. DAISH. Six cases in the Commerce Court and seven cases in the circuit court. The details are all set out in the statement which has been made a part of the record, together with the citation. I do not see here a statement of the time in the Union Stock Yards case, but that would hardly be here, because it was decided, I think, since this report was filed.

I assume that the committee has had before it that portion of the report of the Attorney General which refers to the Commerce Court and the number of preliminary injunctions.

Senator FOSTER. No; the committee has had nothing of that kind.

Mr. DAISH. Then I will incorporate it as a part of my remarks.

The CHAIRMAN. Have you that particular part separated from the rest?

Mr. DAISH. Yes. It is as follows:

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[Extract from report of Attorney General.]

BUSINESS TRANSACTED IN THE UNITED STATES COMMERCE COURT.

The cases of United States v. Atchison, Topeka & Santa Fe Railway Co. et al., known as the Intermountain Rate cases, involving the constitutionality and construction of section 4 of the interstate-commerce act as amended by the act of June 18, 1910 (the long-and-short-haul clause), on appeal from the decision of the Commerce Court, which reversed the orders of the Interstate Commerce Commission, were argued February 23, 26, 27, 1912, and were on April 8, 1912, by order of the court, restored to the docket and assigned for reargument at the October, 1912, term. They have been reargued at the present term before the full bench and resubmitted to the Supreme Court, where it is now pending undetermined.

There were pending in the Commerce Court November 1, 1912, 22 suits brought to review orders of the Interstate Commerce Commission. Appendix 34 contains a list of—

1. All cases transferred to the Commerce Court upon the passage of the act of 1910, or subsequently commenced therein, showing wherein applications for preliminary injunction have been made, and if so, whether granted or denied, and the final decision of the Commerce Court; whether or not appealed to the Supreme Court, and decision in the latter court.

2. Applications to the Commerce Court for temporary injunctions showing 7 temporary injunctions granted, 12 denied, and 6 motions pending. The pending motions are to enjoin the carrying out of orders requiring pipe lines to file schedule of rates and to conform to the interstate-commerce law upon the ground that the petitioners are not common carriers.

3. Statement showing periods of litigation in the Commerce Court as compared to the circuit courts in cases in which preliminary injunctions have been issued. This latter statement shows that the average time which has elapsed between the filing of suit in the courts of first instance and the argument and submission of the case in the Supreme Court since the establishment of the Commerce Court, is 9½ months, whereas the average time previously required when the jurisdiction was in the circuit and district courts, was 21½ months.

In my opinion the Commerce Court has proved a far more satisfactory instrument for the determination of legal questions arising out of orders of the Interstate Commerce Commission than the former method by which such questions were passed upon in the various circuit courts throughout the country.

It is much more expeditious; it has upheld the commission in a larger portion of cases than did either the circuit courts or the Supreme Court; and it has granted temporary injunctions with less freedom than the circuit courts did.

I believe it would be very injurious to the interests of the public, as well as to the due, convenient, and expeditious administration of justice, to now return to the old plan of distributing the litigation among the many district courts of the United States. To require the defense of these cases coincidently in all parts of the country will lead not only to serious inconvenience and greater expense, but inevitably to greater delay, and in this class of cases delay is most seriously disadvantageous to the public.

In my opinion, the criticisms which have been made of the Commerce Court are due chiefly to the fact that the scope of judicial review over the orders of the commission has not yet been clearly defined either by act of Congress or by authoritative decisions of the Supreme Court. This difficulty would be met by legislation which should—

(1) Require the commission to state in its report, as a basis for its order, the findings of fact and the reasons on which the order is based.

(2) Provide that all findings of fact and conclusions of policy appearing in the said report shall be final and conclusive.

(3) Limit court review exclusively to questions of law arising upon the commission's report.

The most important decisions which have been made under the Commerce Court act were those of the Supreme Court in Procter & Gamble v. The United States and in Hooker et al. v. The United States, where it was held that the Commerce Court had erred in taking jurisdiction over orders of the Interstate Commerce Commission which refused any relief to shippers, because the orders merely denied relief to the petitioners.

I recommend that the act be amended so as to provide that the Commerce Court shall have jurisdiction to review all errors of law (as distinguished from questions of fact) in respect to orders of the commission which deny relief to shippers or any other parties entitled to apply to it, to the same extent as they now have jurisdiction to set

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aside orders granting relief. The practical result of the present situation is that, in general, the shippers have no relief against errors of law by the commission, such relief being limited substantially to the railroads.

The CHAIRMAN. Have you anything further which you wish to say?

Mr. DAISH. These questions have been asked with respect to the views of shippers, and I have answered to the best of my ability and given the best opinion I have on the subject. I have not been asked to volunteer an opinion with respect to the views of the carriers. I state my opinion on that subject from talks with my adversaries. The railroads would prefer to have open to them the different district courts rather than the Commerce Court. They could select their own judge, and delay the time which would be running from the order of the Interstate Commerce Commission until the final decision would be of little practical value. In the Galveston Wharf case, the commission's order running for two years, I think I am correct in stating that the Supreme Court heard the case after the two years had expired; the same occurred in several cases.

Senator FOSTER. Will you briefly detail the procedure under the old system and the new procedure under the Commerce Court system?

Mr. DAISH. We start, of course, with the order of the Interstate Commerce Commission.

Senator FOSTER. Beginning with the order of the Interstate Commerce Commission?

Mr. DAISH. Yes. The first procedure by the carrier in most instances is the same except as to the court in which it is filed. Formerly a bill was filed in the circuit court to set aside, annul, and suspend the order of the commission. Of course, that is the most important part of the jurisdiction. There is other jurisdiction by way of mandamus, to enforce an order, etc., but the most important matter is to set aside and annul the order of the commission. Prior to 1910 the commission sent its commissioner, or perhaps the appearance of the commission would be made by the United States district attorney.

The commission would then ask the Attorney General to make a certificate for the expediting of the case, which would require the presence of three circuit judges on the application for a preliminary injunction. If the three judges could not be had promptly, the commission very frequently would postpone the effective date of its order to such time as the three judges could hear the case. Assuming for the purpose of illustration that the order went into effect on the 1st day of February, if you could not get three judges until June, the commission, in order not to have the situation badly mixed up, would postpone the effective date of its order. Sometimes it would be postponed three or four times. Since the establishment of the Commerce Court I think I am correct in saying that in only one case has the effective date of the order of the commission been postponed. Before the establishment of the Commerce Court, when you got the three judges together, there would be an application for a preliminary injunction. Then of course it would depend on whether it was granted. The judges would ordinarily refer the matter to a master for the purpose of taking additional testimony; not always, but more frequently that would be done. Then there would follow the arguments at the convenience of the three judges, and then there would be an opinion

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by the court, from which there would be an appeal direct to the Supreme Court of the United States.

Under the Commerce Court plan the procedure is not materially different except that there must be four judges to sit, because four is a quorum of the court. If an application was made to day, I do not know the present engagements of the court, but they would probably hear the application within 10 days and sometimes within less time than that. The taking of the evidence is generally by one of the judges. I do not think they have ever referred the matter to a master. The court has been able to give very prompt hearings, and then the arguments are set down upon the evidence at an early date. The court has been very quick to hear cases. I have been in court several times when the attorneys have asked that a case go over until another term. Of course, that is the delay of the lawyers and not the delay of the court. Does that answer your question, Senator?

Senator FOSTER. Yes. Under the old system who made the selection of the court in which the case should be brought?

Mr. DAISH. The railroads made the selection in those cases. If there was within the lines of a railroad a judge whom the attorneys for the railroad thought favorable, they naturally would proceed before him. He might at once issue a temporary injunction. Of course at the present time the personnel of the Commerce Court is determined by Executive appointment.

Before I take my seat I desire to call attention to a memorandum submitted by Mr. Henry S. Drinker, attorney at law of Philadelphia. It deals with the business of the court in detail. I ought to say for the benefit of the committee that Mr. Drinker is the author of an excellent three-volume work upon the subject of the interstate-commerce act, and he speaks with authority. Mr. Drinker could not be here at this time and has asked me to present this to the committee for and on his behalf.

The CHAIRMAN. It will be made a part of the record.

Mr. DAISH. I also ask that there be incorporated as a part of my remarks a Memorandum on Jurisdiction of Courts with Respect to Orders of the Interstate Commerce Commission. This deals more with the right to renew of negative orders, so called, but it also contains my mature and deliberate views on the advantages to the public of a special tribunal in these rate questions.

(The memorandum is as follows:)

MEMORANDUM ON JURISDICTION OF COURTS WITH RESPECT TO ORDERS OF THE INTERSTATE COMMERCE COMMISSION.

[By John B. Daish, A. B., LLM.]

OUTLINE.

The Interstate Commerce Commission is an administrative body to which has been confided certain powers with respect to interstate commerce; its duties are judicial and quasi judicial, legislative, ministerial, and administrative.

In performing these duties the commission makes and enters certain orders and requirements; these usually follow hearings either upon complaint or in general investigations, which are by law authorized. Orders in form are either: (*a*) those granting relief, requiring a carrier to cease and desist from charging a particular rate or continuing to enforce a particular practice and prescribing another and less rate or different practice; or (*b*) one denying relief, as dismissing a formal complaint in which has been alleged the unreasonableness of a rate or practice.

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Prior to the act of June 29, 1906, affirmative orders of the commission were enforceable only in a proceeding in the United States courts brought by the commission or a party injured against the carriers. This procedure is still in the statute, but is not usually invoked, because by the act mentioned the orders and requirements were made self-executing both in terms (it being provided within what time they might be made effective), and the failure to obey them probably subjects the offending official to heavy penalties.

Appreciating that the commission might err and that the carriers are entitled under the Constitution to an exercise of the Federal judicial power, that act of 1906 provided for the venue of suits brought "to enjoin, set aside, annul, or suspend any order or requirement of the commission" and in such courts as the venue fixed "jurisdiction to hear and determine such suits is hereby vested."

By the act of 1910 this jurisdiction, along with three other classes of cases, was transferred to the Commerce Court, created by the act.

In the Commerce Court came to be filed cases to enjoin, set aside, annul, and suspend orders of the commission (*a*) which denied relief and dismissed the complaint and (*b*) which although granting relief did not give the complainant the measure of relief to which he thought himself entitled. That the Commerce Court has no jurisdiction of controversies of these classes of cases was determined in Procter & Gamble *v.* U. S.; opinion Supreme Court, June 7, 1912.

While Congress may within recognized limits make the findings of fact and determinations of an administrative official final, it has usually provided by legislation for some measure of review, particularly if any of the duties are judicial or quasi judicial. As to the commission, its decisions against a complaining shipper are now final but if against a respondent carrier are proper subjects of judicial review. There is therefore a kind of presumption that when deciding against a shipper the commission is right and when deciding against a carrier it is wrong.

Manifestly in fairness jurisdiction should be given to the courts to entertain petitions by shippers who have been denied relief by the commission. In order, however, to give to shippers a full, adequate, and complete remedy the power of courts in such cases needs be different than when their jurisdiction is invoked by one against whom an affirmative order has been made. The power only "to enjoin, set aside, annul, and suspend" an order would be inadequate, for after the exercise of such power the shipper would be exactly where he was when he applied to the commission. Within the proper exercise of the judicial power in matters of this nature the courts should have such authority as is fully adequate to meet the existing necessities and requirements.

In a very similar case the Congress has provided that when one is aggrieved by the decision of an administrative official in the exercise of judicial and quasi-judicial duties he may invoke the power of a designated court, which court can revise the decision of the administrative officer appealed from and which returns to the official a certificate of its proceedings and decision to govern the further proceedings in the case. The court marks out the law as applied to the facts of a particular case, in so far as judicial and quasi-judicial determination is necessary; beyond that (and mandamus to compel the performance of a ministerial duty) he is free from control by the courts. The act providing the procedure set forth was enacted in 1870 and has been held constitutional by the Supreme Court.

If similar powers be conferred on courts respecting negative orders of the Interstate Commerce Commission, they would, it is respectfully submitted, meet the present demands and necessities.

1. *The nature of the Interstate Commerce Commission.*—Under the act to regulate commerce, and independent of certain duties and powers conferred by other acts (such as safety-appliance acts, hours-of-service acts, etc.), the Interstate Commerce Commission is beyond doubt an administrative body to which has been confided certain power, authority, and jurisdiction over and in respect to interstate commerce and the carriers and instrumentalities engaged in the transportation of property therein.

It was created by the act of February 4, 1887 (24 Stat. L., 379). This act has been amended from time to time, the powers of the commission have been enlarged, and its duties have been increased, both in number and importance; particularly was this accomplished by the amendments of June 29, 1906, the so-called Hepburn law (34 Stat. L., 584).

Originally the commission was subordinate to one of the executive departments, reporting to the Secretary of the Interior. After being so attached for two years, Congress by law required that the commission report direct to it. Since 1889 (25 Stat. L., 855) it has not been attached to any of the three grand departments of the Government.

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The courts are not wholly harmonious in stating the legal status of the commission and the commission has never seen fit fully to describe itself. It is, however, a body corporate with legal capacity to be a party plaintiff or defendant in the Federal courts. (Texas & Pacific R. Co. *v.* C., I. C. C., 162 U. S., 197.)

Prior to the amendment to the act in 1906 the commission was called an "administrative board" (C., N. O. & T. P. Ry. *v.* I. C. C., 162 U. S., 184, 196) and "an administrative body" (I. C. C. *v.* C., N. O. & T. P. Ry., 167 U. S., 479, 510.)

"It [the commission] is neither a Federal court under the Constitution nor does it exercise judicial powers, nor do its conclusions possess the efficacy of judicial proceedings." (K. & I. B. Co. *v.* L. & N. R. Co., 37 Fed., 567.)

Prior to the amendment of 1906 it was said to exercise quasi-judicial powers. (I. C. C. *v.* C., N. O. & T. P. Ry. Co., 76 Fed., 183; I. C. C. *v.* C., N. O. & T. P. R. Co., 64 Fed., 981; Texas & Pacific Ry. *v.* I. C. C., 162 U. S., 197; I. C. C. *v.* C., N. O. & T. P. R. R. Co., 167 U. S., 479; I. C. C. *v.* L. & N. R. Co., 73 Fed., 409.)

Since the Hepburn law of 1906, by which the powers of the commission were increased, the commission has said:

"There is an analogy between the jurisdiction of the commission and that of a court of equity." (R. Com. *v.* H. V. R. Co., 12 I. C. C., 398.)

And it has also referred to itself as follows:

"While its procedure is to some extent judicial in nature, the commission is essentially an administrative body." (M. & K. Shippers' Ass'n *v.* M., K. & T. Ry. Co., 12 I. C. C., 483, 484.)

2. *The duties of the commission and a consideration of the nature thereof.*—The duties which the commission is called upon to perform are many and varied. To enumerate them would serve no useful purpose at this time; for the present it will suffice to point out the fact that the duties are properly divisible into several classes according to their nature.

Certain duties are judicial or quasi-judicial, as in determining whether or not a rate is reasonable; others are legislative, as in prescribing a rate for the future.

"It is one thing to inquire whether the rates which have been charged and collected are reasonable—that is a judicial act; but an entirely different thing to prescribe rates which shall be charged in the future—that is a legislative act. (C., M. & St. P. R. *v.* Minnesota, 134 U. S., 418, 458; Reagan *v.* Farmers' L. & T. Co., 154 U. S., 362, 397; St. L. & S. F. R. *v.* Gill, 156 U. S., 649, 663; C., N. O. & T. P. R. Co. *v.* I. C. C., 162 U. S., 197, 216; Munn *v.* Illinois, 94 U. S., 113, 114; Memphis & L. R. R. Co. *v.* Sou. Exp. Co., 117 U. S., 1.)" (I. C. C. *v.* C., N. O. & T. P. R. Co., 167 U. S., 479, 499.)

Other duties, particularly those relating to the interior management of the commission, are clearly administrative.

Still others are in part of one class and in part another. The power and duty prescribed by section 12 to execute and enforce the provisions of the act were considered by the Supreme Court in I. C. C. *v.* C., N. O. & T. P. R. Co. (167 U. S., 479, 501):

"The power given is the power to execute and enforce, not to legislate. The power given is partly judicial, partly executive and administrative, but not legislative."

3. *The orders of the Interstate Commerce Commission.*—In addition to the orders of the commission respecting the keeping of accounts, the form of reports of carriers, and general orders of like kind, the commission makes and enters orders in formal cases; these orders close (subject to petition for rehearing) the controversy and proceedings before the commission and are analogous to final decrees in equity courts.

In form orders are (*a*) affirmative, as those granting relief by requiring carriers to cease and desist from charging unreasonable rates and following discriminatory practices and prescribing reasonable rates and nondiscriminatory practices; or (*b*) denying relief, as those dismissing the complaint of the shipper. Orders to accomplish other purposes than those stated necessarily fall within the above classification.

4. *How orders were and are enforceable.*—Prior to the act of June 29, 1906, the orders of the commission, if affirmative in their nature, were enforceable in the Federal courts by a bill by the commission or by any party injured by the failure of the carrier to obey the order. This procedure is still permissible in the Commerce Court, and in addition to the commission and any party injured the United States may, by the Attorney General, file an appropriate bill.

The act of June 29, 1906 (34 Stat. L., 584), made the orders of the commission self-executing or self-enforcing. The failure, neglect, or refusal to obey them within the time limit thereof was made punishable by heavy penalties. A method for annulling them, inasmuch as the commission was not a court, was under the Constitution necessary. He against whom the order ran was entitled to his day in court.

By the act of June 30, 1906 (34 Stat. L., 584), was fixed the venue of circuit courts of the United States in "suits to enjoin, set aside, annul, or suspend any order or re-

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quirement" of the commission, and jurisdiction "to hear and determine such suits is hereby vested in such courts."

This jurisdiction (and jurisdiction over certain other classes of cases) was transferred to the Commerce Court by the act of June 18, 1910, which was subsequently reenacted as part of the Judicial Code (act Mar. 3, 1911).

5. *The power of courts to enjoin, set aside, annul, and suspend orders of the commission.*—When the act of 1906 was before Congress there was a thorough appreciation of the fact that the carriers had a right to a judicial review of the orders of the commission; whether the power of the courts should include "broad" review or "narrow" review was most freely debated, particularly in the Senate. The question was not, however, specifically decided, for to the circuit courts was given "jurisdiction to hear and determine such suits," i. e., suits to enjoin, set aside, annul, or suspend any order or requirement of the commission.

It has, therefore, fallen to the Supreme Court to delineate the limitations within which the courts may act. Reviewing previous cases which had been before it for decision, the Supreme Court in Interstate Commerce Commission *v.* Union Pacific R. Co. (222 U. S., 541, 547), said:

"There has been no attempt to make an exhaustive statement of the principle involved, but in cases thus far decided it has been settled that the orders of the commission are final unless (1) beyond the power which it could constitutionally exercise, or (2) beyond its statutory power, or (3) based upon a mistake of law. But questions of fact may be involved in the determination of questions of law, so that an order, regular on its face, may be set aside if it appears that (4) the rate is so low as to be confiscatory and in violation of the constitutional prohibition against taking property without due process of law, or (5) if the commission acted so arbitrarily and unjustly as to fix rates contrary to evidence or without evidence to support it, or (6) if the authority therein involved has been exercised in such an unreasonable manner as to cause it to be within the elementary rule that the substance, and not the shadow, determines the validity of the exercise of the power."

6. *The courts have no jurisdiction over negative orders of the commission.*—In the course of the many decisions of the commission complaining shipperrs who had been denied relief became aggrieved and being of opinion that the commission had erred and denied substantial rights filed petitions in the Commerce Court for a judicial decision of the controversy and to enjoin, set aside, annul, and suspend the negative orders of the commission. The case first determined was Procter & Gamble *v.* United States, involving the right of carriers to charge demurrage on private cars while on private tracks. The commission had held that the carriers had the right. On petition to the Commerce Court the United States moved to dismiss on jurisdictional grounds. That court held it had jurisdiction but sustained the right of the carriers to assess demurrage under the circumstances stated, thereby agreeing with the commission.

The case was appealed to the Supreme Court, which held that the Commerce Court had no jurisdiction of cases in which the commission had dismissed the complaint of a shipper. The Chief Justice, speaking for the court, after quoting the power conferred upon the Commerce Court over "Cases brought to enjoin, annul, or suspend in whole or in part any order of the Interstate Commerce Commission," said:

"Giving to these words their natural significance, we think it follows that they confer jurisdiction only to entertain complaints as to affirmative orders of the commission; that is, they give the court the right to take cognizance when properly made of complaints concerning the legality of orders rendered by the commission and confer power to relieve parties in whole or in part from the duty of obedience to orders which are found to be illegal."

It therefore follows that in no case in which the commission has dismissed a complaint, even by a divided commission, can the complaining shipper go further; whatever errors may have been made by the commission, nevertheless the shipper is thereafter remediless.

Under the doctrine laid down in the Procter & Gamble case the Supreme Court dismissed the appeal in Hooker et al. *v.* Knapp et al. (involving the reasonableness of rates from Cincinnati to Chattanooga) and The Eagle White Lead Co. et al. *v.* Interstate Commerce Commission. By reason of the same decision the Commerce Court of its own motion dismissed the following cases for want of jurisdiction, or they were subject to have been so dismissed:

Anaconda Copper Mining Co. et al. *v.* United States.

Crane Iron Works *v.* United States.

O'Gara Coal Co. et al. *v.* United States et al.

Cattle Raisers' Association of Texas et al. *v.* United States.

Chamber of Commere of City of Augusta, Ga., *v.* United States and Interstate Commerce Commission.

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International Salt Co. of Illinois et al. *v.* United States and Interstate Commerce Commission.

Louisiana & Pacific Ry. Co. et al. *v.* Interstate Commerce Commission, United States, et al.

Woodworth & Louisiana Central Ry. Co. et al. *v.* Interstate Commerce Commission, United States, et al.

Sibley, Lake Bisteneau & Southern Ry. Co. *v.* United States and Interstate Commerce Commission.

The 12 cases indicate the great importance of having a review of the decisions of the commission, for they constitute one-sixth of all the cases filed in or transferred to the Commerce Court. The demand is not single and stray, but great and broadspread.

7. *The right to invoke the Federal judicial power should be mutual.*—There would seem to be no argument against conferring upon the courts jurisdiction to hear and determine controversies which have been decided adversely to the complaining shipper. Since the Abeline case (204 U. S., 426) he must initiate his proceeding (if he complains of certain matters) before the Interstate Commerce Commission, for its jurisdiction and power in particular controversies is original and exclusive.

The denial of the same right of review to the shipper as is accorded the carrier is beyond doubt a denial of that equality of the law which is fundamental in the Constitution, even if (which seems likely) the shipper is not denied due process of law.

Our jurisprudence has zealously guarded the right of the individual and particularly against erroneous and arbitrary action by administrative and quasi-judcial officials. If a committing magistrate act erroneously, one has habeas corpus; if an administrative official fail to perform a ministerial act, mandamus lies, and in this behalf the courts have broadened rather than narrowed the remedy. Not only have the courts appreciated and kept inviolate the rights of the individual, but Congress itself has usually protected by appropriate legislation his rights. Instance the applicant for a patent; if the individual be denied one, he has from early days been permitted a review and revision of the decision of the Commissioner of Patents. Early in our history he had the right to appeal to a board; more recently and since 1870 he may invoke the judicial power by an appeal thereto. (5 Stat. L., 117; R. S. U. S., secs. 4906 et seq.; 27 Stat. L., 434, ch. 74.)

8. *Powers necessary to be conferred in respect to negative orders to give adequate relief.*—It is manifest that if to the courts be given only the power to enjoin, set aside, annul, and suspend negative orders of the commission the power will not be commensurate with the relief to which one is in justice entitled. The setting aside of or similar action regarding a negative order would leave the petitioner before the court practically where he was as complainant before the commission. The authority of the courts must be sufficiently broad and comprehensive to give adequate relief.

There are, of course, matters which can not properly be placed within and subject to the judicial power; but matters judicial or quasi judicial in their nature are proper subjects for judicial determination. (Murray *v.* Hoboken L. & I. Co., 18 How., 284.)

In its administrative functions the commission is not subject to control. (I. C. C. *v.* Humboldt S. S. Co., 224 U. S., 474.) In its legislative functions it should be as subject to revision by the courts at the instance of shippers as at the instance of carriers. In its judicial and quasi-judicial functions it may constitutionally be made subject to the judicial power. (U. S. ex rel. Bernardin *v.* Duell, 172 U. S., 576.)

To give adequate relief the courts must be endowed, not with purely revising power, for probably such power would vitiate the grant, but with power to mark out the law as applied to particular facts and to certify the law in the case to the commission for its guidance in further proceedings therein. Such is the power and procedure in patent appeals, which has stood the test of the Constitution. (U. S. ex rel. Bernardin *v.* Duell, 172 U. S., 576.)

The analogy between the two situations is complete. Each—the office of the Commissioner of Patents and the Interstate Commerce Commission—are administrative in their nature; each performs certain ministerial and judicial or quasi-judicial functions. To secure justice through the exercise of the judicial power one may have an appeal to the courts for the purpose of securing a patent or determining priority in an interference case. Appeal to the courts or right of judicial review is unfortunately now denied one who has failed for any reason to make a case before the Interstate Commerce Commission.

It may be said that if to the courts be given the power of review of negative orders, carriers, as well as shippers, may in such cases appeal to the courts. This is true, for carriers may under the act seek relief from the commission; but if the commission is wrong, ought not anyone injured by the wrong be entitled to have the wrong righted? If, again, it be said (as it has been) that the commission is the shipper's friend, and one can rely that every intendment in favor of the shipper will be given, it can properly

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be replied that commission is not supposed to be a biased or prejudiced body, and that the number of cases in the Commerce Court heretofore filed by shippers shows that the commission does not always decide with the shippers.

9. *What court should be invested with power in the premises.*—As transportation law is technical, as the facts are complex, as the domain of investigation is broad, and as unanimity and promptness of decision is desirable, it is submitted that the power to be conferred should be conferred upon the Commerce Court. No one will deny that these transportation questions are "matters involving public rights which may be [and usually are] presented in such form that the judicial power is capable of acting upon them and which are susceptible of judicial interpretation." And no one with even slight familiarity with the subject will deny the advantge of the judgment of a trained body of skilled judges, expert in all the intricacies of this special branch of the law.

JOHN B. DAISH.

The CHAIRMAN. I assume from your remarks that you would lay considerable stress and importance on the fact that this court handles a particular branch of business that is not well understood, or not so well understood by the different courts. This court is changed only one judge at a time.

Mr. DAISH. One judge at a time, one each year.

The CHAIRMAN. So that it is a continuous body like the Interstate Commerce Commission, in respect to its judges.

Mr. DAISH. Yes. I might answer your answer still further in this way, with some modesty: The number of books relating to the interstate-commerce act, not referring to the reports and decisions of the commission, would scarcely occupy a shelf in anyone's law office. The number of books which deal with procedure under the act are less than three. That indicates the narrowness of the jurisdiction, and as well the technicality of the points of law which are involved.

MEMORANDUM SUBMITTED BY MR. DAISH FOR HENRY S. DRINKER, JR., ATTORNEY AT LAW, OF PHILADELPHIA.

During the past few years it has become the fashion in this country to criticize the courts. The public gets its information as to judicial decisions mainly from two sources—newspapers and magazine articles. The former are written hurridly by reporters who usually are not familiar with the statute or precedents on which the decision is based and for this reason frequently fail to bring out the important points decided. The latter are almost always compiled merely for the purpose of making a sensation.

It is not unnatural that these circumstances should give the public a wrong idea of the work which is being done by the courts and a most distorted impression of many imortant decisions.

No court has recently come in for more unjust criticism on account of its decisions than the Commerce Court. Of course, a large part of this has resulted indirectly from the proceedings against Judge Archbald, which have prejudiced the public mind to some extent against the court of which he is a member. Entirely apart from this, however, it is believed that the public regards the Commerce Court as having, from its inception, consistently opposed the Interstate Commerce Commission, and as having hampered the latter body in its effort as the champion of the people to secure justice for the public from the railroads and the special interests. The prevailing impression is that, prior to the organization of the Commerce Court, the commission was allowed to go its way unchecked, except, perhaps,

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by the Supreme Court in a few early cases, and that the public would now be better off if appeals from the commission's orders had been continued in the various circuit courts as they were before the recent amendment.

That this impression is erroneous can readily be demonstrated by an examination of the decisions of the Commerce Court and by comparing them with the decisions rendered in similar cases by the various circuit courts during the period before the Commerce Court was created. As a matter of fact, the Commerce Court has reversed the commission much less frequently than did the circuit courts, it has refused more preliminary injunctions than it has granted, and of the decisions by the Supreme Court reversing its decree some of the most important were cases in which the Commerce Court has sustained the commission or where it was upholding the rights of the shipper against the railroad.

The main purpose of the present paper is to present an analysis of the Commerce Court's decisions proving the above facts.

Before doing this, however, it may be well to refer briefly to the main points which the administration emphasized in advocating the creation of the court and in which the experience of the past two years has amply vindicated it.

SAVING OF TIME EFFECTED.

In Attorney General Wickersham's statement before the committee on Interstate and Foreign Commerce he presented a detailed list of cases from 1906 to 1910, showing the length of time which has elapsed between the institution of the suit in the circuit court under the old system and the final determination of the litigation. With this he contrasted the time which elapsed from institution of suit in the Commerce Court under the new system to the argument of the cases in the Supreme Court. The 16 cases in the first list in which the litigation was finally completed averaged two years and one month, while in the 5 cases which had then been finally argued in the Supreme Court the time which elapsed since the institution of suit was in 1 case three months, in 2 four months, and in 2 eight months. The two eight months' cases both included the five months' summer recess of the Supreme Court. The most notable example of expedition was the Intermountain rate case, hereafter discussed.

In spite of its importance, of the enormous amount of testimony taken, and of the number of different railroads, shippers, and communities represented, the case, begun in the Commerce Court in October, was decided by it November 14 and argued in the Supreme Court in February. The Attorney General's recent report points to the same conclusion. The tables there given show that the average time which has elapsed between the filing of suit in the courts of first instance and the argument and submission of the case in the Supreme Court since the establishment of the Commerce Court has been 9¼ months, whereas the average time previously required, when the jurisdiction was in the circuit and district courts, was 21⅓ months. An examination of the commission's docket to November 18, 1912, shows that the average time from the first presentation of cases to the Commerce Court until its final decision has been four months.

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Applications for temporary injunctions have been disposed of in a few days.

The reasons that the same expedition is not possible under the old system are, first, that our circuit and district judges are already overcrowded with important litigation, and, second, that our Federal Statutes and court practice provide a great many classes of cases which are given preference over other cases and which are of equal importance to interstate-commerce cases. These are:

By statutory requirement:

1. Cases under the antitrust act.
2. Cases under the Elkins Act.
3. Cases under the navigation laws.
4. Contempt proceedings before referees in bankruptcy.
5. Habeas corpus proceedings.
6. Interference with submarine cables.
7. Interlocutory injunctions suspending State statutes.

Under court rules:

8. Criminal cases.
9. Ordinary interlocutory injunctions.
10. Cases coming up for a second trial.
11. Cases brought by receivers.
12. Cases brought by the United States.

ASSIGNMENT TO OTHER SERVICE.

When the Commerce Court was created it was thought possible that, with its present jurisdiction, enough cases might not be brought before it to keep all its five members continually occupied. For this reason the act provided that when the business of the court did not require the presence of all its judges the Chief Justice of the United States might temporarily assign one or more of them for service in any circuit court throughout the land. This provision is most useful as it gives to the Chief Justice, as it were, five judges at large, with whom he may fill temporary vacancies caused by illness or otherwise, or whom he may use to help out a crowded calendar in any circuit.

The important services which the several judges of the Commerce Court have performed in this manner during the past year are a conclusive answer to those who urge that there are not enough commerce cases to warrant the existence of a separate court for their consideration. The Commerce Court is not really a separate court. It is merely a collection of circuit judges who are experts in a particular branch of Federal law and who come together to hear and decide a special class of cases. At any time that there are not enough of such cases to keep them fully occupied they may be assigned to the circuits where their services are always wanted.

AVOIDANCE OF DIVERSE DECISIONS.

In the various circuit and district courts there are now 126 judges who would have jurisdiction, under the old system, to hear appeals from the decisions of the commission. In a number of instances circuit courts in different circuits have been divided in opinion on most important points in connection with the powers and jurisdiction of the commission. One such instance will suffice here.

During the first 10 years of the commission's existence one of the most important questions in connection with it was whether, under

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long and short haul clause, railroad competition at the far point justified a higher charge to a nearer point. On this question Judge Shiras, in the circuit court in Iowa in 1891 held that such competition did not justify such a charge. Other judges took the opposite view, but the commission followed the opinion of Judge Shiras until 1897, when the Supreme Court finally reversed the commission's ruling and settled the question against Judge Shiras's view. This state of affairs would have been impossible under the present system.

Under the practice in the Commerce Court, the judges can and do go to any part of the United States to take testimony and hear cases. Under the old system the railroad appealing could choose its circuit court and thus often force the shipper to bring his witnesses long distances.

CREATION OF EXPERT TRIBUNAL.

Most of the questions arising under the interstate commerce act are novel and depend on intricate problems of railroad management, which it requires an expert to understand. In passing on such questions the various circuit judges either have to spend an enormous amount of time mastering the different practices and customs or else decide the cases without a thorough knowledge of railroading. The Commerce Court, being continually confronted with such problems, can master them once for all and use the experience so acquired in future cases.

This is especially important in cases involving temporary injunctions asked by railroads to restrain the operation of the commission's orders. In such cases there is frequently no time for extensive study, evidence, or investigation; and the more thoroughly the judge understands beforehand the nature of the problem presented the better he will be in a position to render a proper decision.

Such are the main arguments in favor of a separate expert tribunal to hear appeals from the decision of the commission. That some court must pass on and sift out the questions presented prior to the hearing in the Supreme Court, all agree. The Supreme Court is overcrowded as it is, and it is clearly necessary to have a lower court dispose of the clear cases and eliminate the unimportant points in the voluminous records before the matter be brought before the Supreme Court for final decision.

DECISIONS BY THE CIRCUIT COURTS.

The original interstate commerce act creating the commission was passed in 1887. From this date until the Mann-Elkins amendment of 1910 the law provided for a proceeding which, though not strictly an appeal, we may for convenience call an appeal from the decisions of the commission to the circuit courts and courts of appeals in the various circuits throughout the land, and from them to the Supreme Court at Washington.

During this period from 1887 to 1910 the commission rendered approximately 1,250 formal decisions, almost half of which were during the last two years of the period. In addition to these it also rendered many other decisions in informal cases not reported.

Of these 1,250 decisions 58 were taken to the circuit courts. The act has never provided expressly for an appeal by a shipper who has been denied relief by the commission, and until the Commerce Court

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took jurisdiction of such a proceeding in the Procter & Gamble case, hereafter referred to, there was no case where an appeal by a shipper from a decision by the commission against him had been entertained by any court. All these 58 appeals were therefore from cases decided by the commission against the railroads. Of the 58 orders of the commission thus brought before the lower Federal courts, 19 were upheld and 39 reversed.

The act specifically provided for an appeal by either party from the circuit court to the Supreme Court. Of the 19 cases in which the commission had been upheld by the circuit court, 12 were taken by the railroads to the Supreme Court. In 8 of these 12 the Supreme Court sustained the railroad and reversed the circuit court and the commission, and in 4 sustained the previous decisions.

Of the 39 decisions by the lower court reversing the commission, the shippers appealed to the Supreme Court in 21. In 16 of these the lower court, which had decided in favor of the railroad and against the commission, was sustained, and in 5 it was reversed and the commission upheld.

The decisions in the circuit courts and circuit courts of appeal adverse to the commission were participated in by 31 different circuit judges and 25 different district judges, or 56 judges in all, a number of whom participated in several decisions. Twenty of these decisions were rendered by the circuit courts of appeals in 7 out of the 9 circuits.

These figures may be given in another way. Prior to the Commerce Court, the commission appeared before the Federal courts in 58 cases seeking to enforce its orders against the railroads and in favor of the shippers. Twenty-five of these 58 cases ended in the lower courts and were not appealed to the Supreme Court. In these 25 the commission's order was sustained in 6 and reversed in 19. The other 33 were ultimately decided by the Supreme Court, 9 in favor of the commission and 24 against it.

Taking all together we have 15 cases in which the commission's order was sustained and 43, or 74 per cent, in which it was reversed.

All the court decisions against the commission at this time were in favor of the railroad and against the shipper.

DECISIONS BY THE COMMERCE COURT.

Of the 88 cases so far on the docket of the Commerce Court, a number have been dismissed by stipulation, others have been withdrawn by the petitioners or dismissed for want of jurisdiction, others are still pending. For the purpose of this paper we will consider only the cases in which the Commerce Court has passed on the validity of an order by the commission, proceedings in which several similar cases were consolidated being treated here and in the previous tabulation as one decision.[1]

Of the 22 cases in which the Commerce Court has reviewed the commission's orders on final hearing, the commission has been reversed in 9 and sustained in 12. In the other case the commission was sustained in part and reversed in part. To the 12 cases in which the commission was sustained should also be added another case (No. 36,

[1] The latter consideration accounts for certain discrepancies between the figures here given and those in the report of the Attorney General or in other tabulations.

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in note), in which the petition to annul the commission's order was withdrawn after a preliminary injunction had been refused by the Commerce Court. It has thus sustained the commission in 13 cases, while reversing it in 9.[1]

[1] NOTE—

Suit No.	Title.	Nature of proceeding.
4	L. & N. R. R. Co. *v.* I. C. C., 195 Fed., 541.	Order reducing rates from New Orleans to Montgomery annulled.
7	A. T. & S. F. Ry. Co. *v.* I. C. C., 190 Fed., 590.	Preliminary injunction, granted by circuit court to suspend commission's order reducing rate on lemons, made permanent by Commerce Court. (Same case filed again after modification of opinion by commission and temporary injunction refused.)
18–19	Russe & Burgess et al. *v.* I. C. C., 193 Fed., 678.	Injunction granted at suit of shipper to annul order of commission refusing him reparation against railroad on account of his laches. Subsequently dismissed for want of jurisdiction on authority of Procter & Gamble case.
21–24	Goodrich Transit Co. et al. *v.* I. C. C. and U. S., 190 Fed., 943.	Preliminary injunction, issued by circuit court to suspend orders requiring water lines to file reports, made permanent by Commerce Court. Reversed by Supreme Court (224 U. S., 194).
38	B. & O. R. R. Co. *v.* U. S. (not yet reported).	Lighterage case. Final decree annulling commission's order entered after temporary injunction had been sustained by Supreme Court (225 U. S., 306).
46–47	Nashville Grain Exchange and L. & N. R. R. Co. *v.* U. S., 191 Fed., 37.	Order prohibiting elevator at Nashville as a discrimination against Atlanta and other towns annulled on the ground that the discrimination was justified by competition.
50–51	A. T. & S. F. Ry. Co. et al. *v.* U. S., 191 Fed., 856.	Intermountain rate case. Order of commission permitting zone rates suspended by Commerce Court. Appeal pending in Supreme Court.
60	B. & O. S. W. R. R. Co. *v.* U. S., 195 Fed., 962.	Order requiring switch connection with electric road suspended. Affirmed by Supreme Court (226 U. S., 14).

The 13 decisions in which the commission's order has been sustained by the Commerce Court are as follows:

Suit No.	Title.	Nature of proceeding.
5–6	Hooker et al. *v.* I. C. C., 188 Fed., 242.	Petition by shipper to annul order of commission because not requiring sufficient reduction in rates dismissed by Commerce Court. Supreme Court held that Commerce Court had not jurisdiction over petitions by shippers (225 U. S., 302).
9	Proctor & Gamble *v.* U. S., 188 Fed., 221.	Order authorizing demurrage on private cars on private tracks sustained. Supreme Court held Commerce Court had no jurisdiction over petitions by shippers (225 U. S., 282).
25	Omaha & C. B. St. Ry. Co. *v.* I. C. C., 191 Fed., 40.	Order reducing rates on street railway sustained by Commerce Court; injunction previously issued by Circuit Court (179 Fed., 243) dissolved. Appeal pending in Supreme Court.
31	Pennsylvania R. R. Co. *v.* I. C. C., 193 Fed., 81.	Order regulating car distribution, including cars for intrastate shipments, sustained. Appeal pending in Supreme Court.
35	D. & R. G. R. R. Co. *v.* I. C. C., 195 Fed., 968.	Order reducing rates on beer sustained by Commerce Court after suit for damages based on same order in circuit court (187 Fed., 485) had been dismissed.
36	A. T. & S. F. Ry. Co. *v.* U. S. (no opinion).	Temporary injunction to restrain commission's order denied and petition dismissed by stipulation.
40	N. & W. Ry. Co. *v.* U. S., 195 Fed., 953.	Order forbidding discrimination in rates in favor of Roanoke over Winston-Salem sustained.
42	Arkansas Fertilizer Co. *v.* U. S., 193 Fed., 667.	Commission's construction of statute of limitations in reparation cases sustained.
54	Anaconda Copper Mining Co. *v.* U. S. (not yet reported).	Order dismissing claim for damages on account of lower rate on coke for iron blast furnaces than for copper smelting sustained.
55	Crane Iron Works *v.* U. S. (not yet reported).	Order dismissing petition for through rates for absorption of switching charges sustained.
58	Fla. E. C. Ry. Co. *v.* U. S. (not yet reported).	Order reducing rates on fruit and vegetables sustained.
59	Sou. Pac. Co. *v.* U. S., 197 Fed., 167.	Order requiring reduction of lumber rates from Willamette Valley sustained.
65	Augusta Chamber of Commerce *v.* U. S. (not yet reported).	Order dismissing complaint of rates on coal sustained.

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But in determining whether the Commerce Court has, in comparison with the previous rulings of the circuit courts, unduly favored the railroads as against the shippers, all the nine reversals of the commission in the foregoing table can not fairly be counted against the Commerce Court. In two of the nine (Nos. 7 and 21–22) the Commerce Court merely continued a previous order granted by the circuit courts, and in two others (Nos. 18 and 50) the action of the Commerce Court in reversing the commission was in the interest of shippers rather than of the railroads. The last two decisions would seem worthy of special notice.

THE RUSSE AND BURGESS AND THOMPSON LUMBER CO. CASE.

In the first (No. 18) the commission has denied part of the reparation claimed by shippers on the ground of the complainants' delay in bringing the suit. But as this delay did not amount to the limitation period provided in the act the Commerce Court set the order aside, holding that the complainants, Russe and Burgess and the Thompson Lumber Co., were entitled to the entire amounts of their claims.

This decision is especially significant in view of the fact that in an independent proceeding in the circuit court for damages based on the commission's restricted orders, the complainant was denied all relief.[2]

We therefore have a case in which complaining shippers were given only partial relief by the commission, were denied even that by the circuit court, but were held by decree of the Commerce Court to be entitled to even more than the commission had given them.[3]

The other case in which the decree of the Commerce Court worked really to the advantage of shippers and against the railroads was the well-known Intermountain Rate case.

THE INTERMOUNTAIN RATE CASE.

The original act of 1887 contained a clause, known as the long and short haul clause, forbidding a greater charge for a less distance over the same line. This clause, however, contained a phrase ("under substantially similar circumstances and conditions") which the Supreme Court construed to permit the carriers to charge a greater rate to a less distant point, provided there was competition at the far point which did not exist at the near one. This phrase was removed by the amendment of 1910, but a proviso was left whereby it was "provided that upon application to the commission such com-

[1] NOTE—Continued.

The decision in which the commission was sustained in part and reversed in part was:

Suit No.	Title.	Nature of proceeding.
15	U. S. ex rel. *v.* Union Stock Yard & Transit Co., 192 Fed., 330.	Order directing filing of reports.

[2] Darnell *v.* Southern Pacific Co. (190 Fed., 659).

[3] After the decision by the Supreme Court in the Proctor & Gamble case, hereafter referred to, the Commerce Court annulled its order in the Russe and Burgess case on the ground that it had no jurisdiction over appeals by shippers.

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mon carrier may in special cases, after investigation, be authorized by the commission to charge less for the longer than for the shorter distance."

Soon after the amendment of 1910 went into effect, the commission received numerous applications by carriers asking to be relieved from the drastic rule of the statute, which scaled all rates to inferior points down to the low competitive rates at the terminals.

These applications were opposed by the shippers at inland points. The commission, in June, 1911, made a sweeping order, applicable not merely to certain specified rates or localities, but to the whole country, whereby it was divided into certain broad zones; the carriers were authorized to charge for transportation to or from points within these zones rates exceeding the competitive rates to the more distant seacoast terminal points by from 7 to 25 per cent.

The Commerce Court set this order aside on the ground that the act gave the commission no such broad power to relieve the railroads as that assumed by it; that its jurisdiction was restricted to relieving carriers from the operation of the long and short haul clause only "after investigation" "in special cases," and that under no circumstances could the whole United States be considered a "special case."

The commission has appealed this decree to the Supreme Court, where it was argued in February and reargued in October. Many shippers have opposed the appeal of the commission on the obvious ground that if its orders be set aside as directed by the Commerce Court the carriers will be left with the hard and fast rule of the act, which will require them to reduce all their inland rates to the low figures of the Pacific coast rates. This case, therefore, like that just discussed, can not be regarded as one in which the Commerce Court has favored the railroads, but rather the reverse.

Of the 23 cases, therefore, in which the Commerce Court has finally passed on the validity of an order by the commission, but five were therefore decrees original with it, in which an order of the commission in favor of a shipper was held to be invalid.

Contrast with this the 43 out of 58 final decisions of the circuit courts against the commission in favor of the railroads prior to 1910. The figures speak for themselves.

TEMPORARY INJUNCTIONS.

In the report of the Attorney General he gives a list showing the applications to the Commerce Court for temporary injunctions. Of the 25 cases in the table in appendix 34, 7 were granted, 12 refused, and 6 applications were pending. In 2 of the 7 cases in which temporary injunctions were granted the decree was reviewed by the Supreme Court and in one case the Commerce Court has been sustained and reversed in one.

DECISIONS OF THE SUPREME COURT REVIEWING COMMERCE COURT DECISIONS.

Attention has been frequently called to the fact that in the majority of the decisions by the Commerce Court which have been passed on by the Supreme Court the order of the Commerce Court has been reversed. In this connection the Commerce Court has been mis-

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represented by the newspapers. For instance, the Philadelphia Ledger for June 8 contained a Washington dispatch reporting the reversal of the Commerce Court on June 7 in four cases and stating that "the Supreme Court has thus far passed on eight decisions of the Commerce Court and has reversed the Commerce Court in them all." This statement is misleading. The first four cases (Nos. 21–24), although covering four numbers on the Commerce Court docket, were really but one case and involved but one question, and were disposed of by the Commerce Court and by the Supreme Court in but one opinion. The same was also true of two of the other cases referred to (Nos. 5, 6). Two other decisions by the Supreme Court have since been handed down, in both of which the Commerce Court was sustained, so that as a matter of fact the Supreme Court has reviewed decisions by the Commerce Court in six cases.

THE WATER-LINE REPORTS CASE.

The first Commerce Court decision to come before the Supreme Court was that in the Goodrich Transit Co. and White Star Line case, which involved the power of the commission to require reports from water carriers. Prior to 1908 the commission had not required water carriers to report any of their business except that carried on under a common arrangement with a rail line for continuous rail and water transportation, and that they need not report their strictly port-to-port business. In 1908, by administrative ruling No. 66, the commission reversed itself, holding that where a water line united with a railroad in joint rates on particular traffic it thereby subjected all its interstate traffic to the provisions of the act. In January, 1909, the commission again reversed itself, holding that only such traffic as was actually carried under a common arrangement with a railroad was subject to the act. In June, 1910, the commission reversed itself for the third time and ordered the water lines which did any rail and water business to report on their entire traffic. The circuit court in Illinois granted an injunction to set aside the order of the commission, taking the view of the law to which the commission itself had so long adhered. Later the Commerce Court continued the injunction on the same ground. The Supreme Court, however, reversed the Commerce Court and upheld the commission, holding that although the commission might not change or fix water rates except where they were used in connection with transportation by rail, yet where a water line elected to carry on some of its business in connection with a railroad, it bound itself thereby to report all its business to the commission.

THE PROCTER & GAMBLE CASE.

The interstate-commerce act specifically provides no appeal for a shipper who has been denied relief by the commission. The legislators who framed the act evidently regarded the commission as the champion of the shippers and the rights of the latter as safe in its hands. The Hepburn amendment of 1906 gave to the circuit courts, however, jurisdiction to suspend or annul orders of the commission which were not in accordance with the law, and by the amendment of 1910 this jurisdiction was transferred to the Commerce Court. Prior to 1910 it had been applied only to affirmative orders by the

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commission commanding the carrier to do something, and not to negative orders denying relief to a shipper.

One of the first cases coming before the Commerce Court was the Procter & Gamble case (No. 9). The Cincinnati, Hamilton & Dayton Railroad had in force a tariff provision whereby demurrage was charged on the privately owned freight cars of the Procter & Gamble Co. while these cars were standing loaded on its own private siding. The latter company applied to the commission to have this regulation set aside as unreasonable. The commission, however, dismissed the complaint and upheld the regulation as one designed to keep the private cars of the large shippers in service and to prevent discrimination in favor of them and against the small shippers who owned no such cars.

The Procter & Gamble Co. then applied to the Commerce Court to set aside the commission's order. This the railroad opposed on two grounds—first, that the Commerce Court had no jurisdiction to annul a negative order, and, second, that the order was a proper one. The Commerce Court held that it had jurisdiction to hear the appeal, but that the commission's decision was right and it would not interfere with it. The Procter & Gamble Co. again appealed to the Supreme Court. That court decided that it need not pass on the legality of the commission's order, since under the law as it now stands the Commerce Court has no jurisdiction to hear an appeal by a shipper to whom the commission had denied relief.

This decision was heralded in the newspapers as curbing the power "usurped" by the Commerce Court. Few people recognized, however, that the power denied the Commerce Court was power to hear appeals by shippers as well as by railroads, and that as the result of it the shipper who has been refused relief by the commission has now no remedy.

THE HOOKER & EAGLE WHITE LEAD CASE.

Another case decided by the Supreme Court on the same day as the Procter & Gamble case, and also reversing the Commerce Court, was the Hooker & Eagle White Lead case. (Nos. 5–6.)

In 1894 the Cincinnati and Chicago freight bureaus had applied to the commission for a reduction of rates over various roads on the ground that eastern cities were being unduly favored. The commission issued an order requiring the reduction, but the circuit courts and the Supreme Court refused to enforce it on the ground that, under the act as it then stood, the commission had no power to fix rates for the future. This power was later expressly given by the Hepburn amendment, and Hooker, as president of the Cincinnati Shippers' Association, then applied to the commission for a new order requiring a reduction of the rates. The commission issued an order reducing the rates somewhat, but not as much as Hooker and his associates thought proper. They thereupon appealed to the Commerce Court to have the order set aside as unduly favoring the railroads. The Commerce Court held that it had the power to hear the appeal, but that the rates fixed by the commission were reasonable. Hooker appealed further to the Supreme Court, which dismissed the appeal on the same ground as in the Procter & Gamble case, holding that the Commerce Court had no jurisdiction to hear an appeal by a shipper or to set aside an order of the commission in favor of the railroads.

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THE COMPANY FUEL CARS CASE.

In this case the commission had entered an order requiring certain railroads to count company fuel cars in rating various coal mines. The order was suspended by the Commerce Court by a temporary injunction, which was reversed on appeal to the Supreme Court.

THE LIGHTERAGE CASES.

In 1907 the Federal Sugar Refining Co. filed a complaint with the commission to compel the Baltimore & Ohio and other railroads to extend their New York lighterage limits to Yonkers, 10 miles up the Hudson. This complaint the commission dismissed. The Federal Co. then adopted the practice of having the Ben Franklin Transportation Co. carry its sugar by boat from Yonkers to a pier within the lighterage limits where it touched, and on this account claimed the right to a lighterage allowance equal to that allowed another refinery situated within the lighterage limits which operated a wharf leased to the railroads and by them used as a terminal. The commission sustained a second petition based on this new practice; but the Commerce Court issued a preliminary injunction suspending the order on the ground that the stopping at the wharf was a mere subterfuge to obtain the allowance and that the transportation did not begin bona fide within the lighterage limits. This preliminary order was sustained by the Supreme Court on appeal and was subsequently made permanent by the Commerce Court.

THE STREET-RAILWAY-SWITCH CONNECTION CASE.

The Hepburn amendment of 1906 gave the commission power to compel the railroads to allow switch connections to shippers and to lateral branch lines of railroad on certain specified conditions. The Cincinnati & Columbus Traction Co. filed a petition to secure a switch connection under this provision and obtained an order from the commission. This order was annulled by the Commerce Court, however, on the ground that the traction company was not a lateral branch line within the meaning of the act, but was a railroad parallel and competing with the trunk lines with which it desired a connection. The decree of the Commerce Court was affirmed by the Supreme Court.

At the end of this opinion Mr. Justice Holmes intimated that an order by the commission based on its own investigations and not on the testimony of witnesses could not be sustained in the courts. This dictum gives strong support to a previous ruling by the Commerce Court based on the same ground. (Atlantic Coast Line et al. *v.* I. C. C., 194 Fed., 449.)

Of the six cases, therefore, in which the Supreme Court has reviewed the decrees of the Commerce Court, it has sustained the Commerce Court in two. Of the four cases in which it reversed the Commerce Court one, the Procter & Gamble case, was a decree sustaining the commission; another the Hooker case, was one in which the Commerce Court had set aside an order by which the commission denied reparation to certain shippers; and a third, the Goodrich Transit case, was one in which the Commerce Court had merely continued a ruling by the circuit court which followed the former deci-

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sions by the commission on a construction of the act as to which the commission had reversed itself three times within two years.

Another most important point, and one which naturally the public does not understand unless attention be called to it, is that where a new court is created or given new and doubtful powers, often the only way for the court to find out the extent of these powers is to exercise them to their fullest possible scope in order that the question may come before the Supreme Court and it may define the powers conclusively. If the court refuses to exercise a doubtful power, the matter will usually drop and the existence or nonexistence of the power not be finally determined for a long time. Meanwhile parties may be denied relief to which it will be ultimately found they were entitled. For this reason a court newly created or charged with new duties will often assume greater jurisdiction or powers than it really believes itself to possess in order to give the highest court the opportunity to settle finally and at once as many doubtful questions as possible. A great many of the early reversals of the commission by the courts are accounted for in this way. As a matter of fact, the commission was reversed by the circuit courts and the Supreme Court in all but 2 of the first 23 cases in which it sought the aid of the courts to enforce its order. During the first few years of the existence of any new court the number of reversals often largely exceeds the affirmances.

The original interstate-commerce act and each one of the nine successive amendments to it have presented new and difficult problems of law and procedure, which will probably puzzle our best lawyers and judges for some time to come.

The creation of the Commerce Court was a wise and helpful step in the solution of these problems. Its jurisdiction has been accurately defined and it is prepared to do efficiently the useful work for which it is so well fitted. Its abolition would be a serious loss to the administration of Federal laws in this country.

HENRY S. DRINKER, Jr.

PHILADELPHIA, *January 1, 1913.*

(Communication addressed to the chairman by Mr. John B. Daish, and accompanying inclosure:)

WASHINGTON, *January 9, 1913.*

Hon. FRANCIS E. WARREN,
United States Senate, Washington.

DEAR SENATOR: Reference to the hearings on the Commerce Court, beg to say that there has been called to my attention a compilation of all the articles, editorials, etc., on the subject. I transmit same and have to request that it be reproduced as a part of the hearings; you will observe that arguments on both sides of the question will be found in the various publications. I have the honor to remain,

Very truly, yours,

JOHN B. DAISH.

SELECT LIST OF REFERENCES ON THE COMMERCE COURT.

[From Special Libraries, December, 1912. Compiled under the direction of H. H. B. Meyer, chief bibliographer, Library of Congress, with the cooperation of R. H. Johnston, librarian of the Bureau of Railway Economics. This list is based on an original compilation by Mr. Johnston of 58 titles. To these the Division of Bibliography added 69 titles chiefly from legal and official sources and from journals specially devoted to transportation problems.]

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APPENDIX B.

JURISDICTION OF COMMERCE COURT—ITS ENLARGEMENT.

[Hearings before the Committee on the Judiciary, House of Representatives, Sixty-third Congress, first session, on H. R. 5902, June 18 and 21, 1913.]

COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
Wednesday, June 18, 1913.

The committee this day met, Hon. Henry D. Clayton (chairman) presiding.

The CHAIRMAN. The committee will be in order. Gentlemen, the committee has met this morning pursuant to its resolution adopted on yesterday for the purpose of hearing Representative Broussard and quite a number of gentlemen who are interested in the subject matter covered by bill H. R. 5902, which was introduced in the House on June 6 by Mr. Broussard. Mr. Broussard being present, I would ask that he arrange the order in which these gentlemen, who are present, shall be heard. The committee will be glad to hear from you or any of these gentlemen in the order which you may suggest.

STATEMENT OF HON. ROBERT F. BROUSSARD, A REPRESENTATIVE FROM THE STATE OF LOUISIANA.

Mr. BROUSSARD. Mr. Chairman and gentlemen of the committee, I thought that I would make a brief statement of the provisions of the bill which I have introduced in the House before the general hearings as to the importance of this measure should be presented to the committee. It is not my purpose to deal with the bill at any length beyond attempting to give a definition of each provision in the bill, which I expect the members of the committee have before them. After having given this brief statement I have one or two documents which I desire to present to the committee in support of the bill, and then I had purposed asking Mr. Clark, the chairman of the Interstate Commerce Commission, to appear before the committee and give his views and the views of the commission regarding this bill, after which there are some shippers who are here and have to return home this afternoon, and attorneys for organizations of commercial bodies in the country who would like to be heard, and then Mr. Denison, the Assistant Attorney General, who has helped to

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frame this bill almost in its entirety. I should like to have his views presented to the committee. As the hearings develop it may be necessary to secure hearings from possibly judges of the Commerce Court itself, because there are provisions in this bill which affect their tenure in a way, and the committee may find it wise to have them here. Possibly members of the commission, outside of Mr. Clark, may want to be heard on it.

I want to say to the committee that last year, after a decision of the Supreme Court regarding negative orders, or rather the failure of the commission to give an affirmative order upon a complaint, had been rendered by the Supreme Court, I introduced a bill similar to this bill, however, not covering the entire scope covered by the bill which I am now presenting, but simply with a view to permitting shippers, when the commission refused to grant their requests for orders against carriers, to have questions of law involved in the decision determined by the Commerce Court, just as where orders given by the commission against the carriers can be presented to this court on the questions of law involved in the decision. A hearing upon that bill, together with the bill that had been presented at the same time by Mr. Sims, of Tennessee, to abolish the Commerce Court, was had before the Committee on Interstate and Foreign Commerce. I might say that protracted hearings were had before that committee. To come back to the bill which I have introduced at this session, and which we are now considering, I thought that the congested condition of the docket of the Supreme Court of the United States warranted transferring some of the cases from that court to the Commerce Court in order to make it possible for the Supreme Court to more expeditiously handle its docket.

It is probably known—it has been published in the press—that the Supreme Court held a longer session this year by one month than has been customary, and yet more than 600 cases remained pending before that tribunal for adjudication upon its adjournment the other day. When we consider that that court handles nearly 600 cases a year—something short of that number—we can easily ascertain that the court is fully one year behind with its work despite every effort being made by the court to keep up with the increased litigation growing out of the increased commerce of the country and the increased population of the United States.

In recent years we have adopted quite a number of governmental agencies to expedite the public business of the country, and these agencies have brought about a new character of suits, all of which, under the Constitution, without any action on the part of Congress to the contrary, must go for final determination before the Supreme Court. For instance, the bankruptcy law has brought numerous cases to that court for determination, where, prior to the adoption of the bankruptcy law by Congress, these cases were settled in the State courts and under the laws of the various States providing for bankruptcy proceedings.

The acquisition of Porto Rico and the Philippines, growing out of the Spanish-American War, has brought to the Supreme Court other cases which must be determined finally by that court, at least until Congress exercises the power which it has under the Constitution to provide some other tribunal for the final adjudication of these cases,

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and thereby relieve the Supreme Court of them. Of course, in the first instance I have cited, that of bankruptcy cases, there ought to be a provision to permit questions of law from the intermediate tribunal under my bill—the Commerce Court—to be presented to a supreme court where a party complains that that court has not applied the law properly. So the acquisition of the Canal Zone and the construction of the canal, and the civil government which in the last Congress has been provided for, will bring cases of all kinds emanating in the zone before the Supreme Court for final determination. Those cases will be tried by courts provided for in the civil-government bill of the Canal Zone which was passed by the last Congress, and on appeal they will come before the United States Supreme Court, which is already more than a year behind with its business. The Constitution does not require that these insular cases be finally passed upon by the Supreme Court of the United States, because the Supreme Court has held that the Constitution goes into these Territories only so far as Congress makes it go, and therefore those cases can be easily tried and finally adjudicated by some other court than the one Supreme Court provided in the Constitution. So I have taken these cases and have put the appellate jurisdiction into the Commerce Court. Its docket is not large, and under the present operation of that court, when it has no further business before the court, the judges are used and directed to go into districts throughout the country where the district dockets have become congested and help clear up these dockets for the judges. The Commerce Court can easily assume jurisdiction over these cases, and then the Supreme Court would, to the extent of cases arising in those Territories, in the Canal Zone, or out of bankruptcy cases, be relieved of its congested docket.

It has been suggested that there properly might be included in this list of jurisdiction cases arising before the Court of Claims; that those cases might also be included in that list, and thus further relieve the Supreme Court, until we could get it on a basis where litigants would not have to wait, not through any fault of the court but through the superabundance of business that crowds into that court. In that way litigants might have an opportunity to get quick determination of issues in which they were vitally interested. The Intermountain case, for instance, is still pending before the court. It has been argued, and it is a very important case to a vast part of the territory of this country, yet the court has not been able to reach it before its adjournment. I merely cite that as one of the cases.

It has been said, and I believe we all agree in the statement, that delay in determining a man's rights sometimes amounts to depriving him of his rights, and where a court is situated as the Supreme Court of the United States is situated to-day, delay in determining cases of public import, such as the case I have just detailed, is tantamount to depriving a community of a great deal of the rights which belong to it, not through the fault of anyone but because there is not an opportunity, working as hard as these judges may and do work, to determine cases with that promptitude that ought to follow litigation involving questions of any import to the country, not only to individuals but to communities.

Having made this statement, and not desiring to take very much of the committee's time, I merely want to call attention to the pro-

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visions of the bill which, in a general way, I have called attention to in the few remarks I have made. I want to deal with each section of this bill in detail and do it hurriedly.

The first section changes an article of the judicial code by providing for writs of error and appeals from the Supreme Court and the United States District Court of Porto Rico to the Commerce Court. It takes these cases from the Supreme Court and makes the Commerce Court the court to try them on appeal.

Section 2 renumbers an article of the judicial code, conferring jurisdiction on the Commerce Court to review, reverse, modify, and affirm final judgments and decrees of the Supreme Court of the Philippine Islands. These cases are of a character which need not necessarily, under the Constitution, be tried by the one Supreme Court provided for by the Constitution.

Section 3 confers jurisdiction on the Commerce Court to review, revise, modify, reverse, and affirm final judgments and decrees of the district court of the Canal Zone. These cases are in the same category with the Philippine Islands cases.

Section 4 amends section 251 of the judicial code, and provides for certiorari to the Supreme Court of the United States of cases determined by the Commerce Court, except the class of cases now appealed from the Commerce Court to the Supreme Court.

Section 5 transfers the jurisdiction of the Supreme Court in bankruptcy cases to the Commerce Court.

Section 6 provides for the disability of a judge; no redesignation of judge on Commerce Court after 1916; and that three of the judges, instead of four judges out of the five, shall constitute a quorum for the transaction of business. Under the present law a judge or two judges may be assigned to some district where the docket has become crowded, and if a case is presented to the Commerce Court it is necessary to recall one of the judges in order to have a quorum with which to do business, but under this bill three of the judges may try the case and the two assigned to help relieve the congested condition of the docket in some particular district in the country can continue to do the work for which they have been sent into that district.

Section 7 amends a section of the judicial code by adding to the words "cases brought to enjoin, set aside, annul, or suspend, in whole or in part, any order of the Interstate Commerce Commission," the following:

> including negative orders dismissing complaints filed before the commission, but not including orders for the payment of money: *Provided, however,* That the provisions of this paragraph shall not be so construed as to give the court the right to substitute its judgment for the judgment of the commission as to matters which are either administrative or legislative in character.

This was the provision which was the substance of my former bill. The idea there was to give, as I stated awhile ago, the same right to a complainant whose claim had been denied by the Interstate Commerce Commission to go into the courts in the event a complaint was made that the law as applied was misconstrued by the commission or that it was beyond the power of the commission to act. Of course, we all know that the commission is not a judicial body; it is a business body. It is not composed of judges nor necessarily of lawyers,

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for that matter, but of practical business men who have a knowledge of transportation questions. Congress intended that the commission should have the power to decide all questions of fact, and these determinations of the commission are not to be reviewed, because if the courts were permitted to review them, then there would be a substitution of the judgment of the courts for the judgment of the commission.

But the right was reserved, wherever the commission ordered some one to do a thing, ordered some carrier to do a certain thing, that if the carrier complained that the law had been misconstrued, or that the order of the commission was in excess of the power conferred by the law, then the court was open to this particular complainant. But if the commission said, "No; we will not issue the order you pray for," after investigating the facts, and in determining the case a question of the power of the commission to refuse to do it or a question as to the construction of the law under which it is acting became the basis of the complaint, that individual, under the present law, is deprived of an opportunity to present the questions of law to the Commerce Court and have them finally passed upon by the Supreme Court. And there is no doubt in my own mind but that Congress fully intended that questions of law determined by a body which is legislative and administrative, as well as judicial, should be tested by the courts.

I can now recall to mind the case which prompted my introduction of the bill in the last Congress. That case is known as the Tap Line case. Tap lines, as you no doubt know, are short roads that feed from the private property of corporations or individuals—property separated from the main or trunk road to which a particular line may run. These short roads had complained of some order of the commission refusing to grant them certain rights with regard to freight going over the tap lines and then going over the trunk lines.

The commission refused to grant the order, and the refusal, it appeared, was predicated upon the fact that the commission took the view—I think I am stating its reasons correctly—that as to a shipment on the tap line to the point of destination along the main line of which the tap line was a feeder, belonging to a stockholder of that line, a public corporation under the law of the State in which it was organized and operated—that a stockholder in that line had to carry his own goods to the junction point and then pay the full rate from the junction point to the point of destination, while a man who lived along the line of the road and owned no interest in the road could get a through rate from the point of shipment over the tap line and over the trunk line to the point of destination. Possibly 100 tap lines were involved in this case, principally throughout the South, and half of them, probably, from my own State, and the matter became of such great import that the railroad commission of my own State, on its own motion, intervened in the suit in order to protect the interests of the State of Louisiana, and especially to protect the investments made in the lumber section. Arkansas was affected in the same way, and Missouri had some of those cases—Texas had a whole lot of cases—but all of the cases were consolidated and were enabled to be consolidated because there was one

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court in which to try the issues involved. But after the decision of the Supreme Court in the Procter & Gamble case the Commerce Court on its own motion dismissed all of these cases for want of jurisdiction. So that what the commission had done was simply to refuse petitions which had been made by these various tap lines; and, there being no affirmative order in the case, under the Procter & Gamble case there could not be a review.

In that instance the action of the commission was predicated upon the idea that as to one set of citizens in a State a road was a common carrier and as to other citizens it was privately owned property. It had this effect upon the development of the country, particularly in the timber sections of the United States, that a man who went out in the forest and cut timber on his own land was being penalized because, in order to expedite matters, he constructed a road which enabled him to bring his product to the trunk line, while the man who was more indolent or more careless or not so venturesome, but who waited until some one else built a railroad near his land, then constructed a mill right alongside of the railroad, and could get the advantage of a through rate because he had not taken any part in the development of that particular section of the country; he could get a through rate to the point of destination, while the man who had invested his money in order to reach the market more quickly was being penalized by being compelled to carry his freight to the junction point, and in order to reach the point of destination compelled to pay full rates from that point. There being a question of law involved in the proposition, to wit, whether a railroad could be held at one and the same time to be a common carrier for one set of citizens and not a common carrier as to another set of citizens, of course the owners of these properties and the officials of the States wherein they were located were anxious to have that question determined by a court.

And the commission itself, after the Commerce Court, on its own motion, had dismissed these cases for want of jurisdiction because the order was negative, reissued the order, maintaining the first position which they had taken, but making it in an affirmative instead of a negative, in order to have the courts pass upon the question of law involved. Now, I say, when a proposition is presented in which the law is so conflicting that the commission or any of the agencies of the Government must reverse themselves in order to ascertain for themselves and for their own guidance in the future what the interpretation of the law is, that there ought to be some right of review given to the man who claims that the law is not as determined by the commission, and some court in which the matter can be finally passed upon. So this same provision appears in the bill which was in the former bill.

Then in section 7 I suggest that there be added to the provisions respecting mandamus the following:

> And all such mandamus proceedings as may be brought to review any action of the Interstate Commerce Commission or any refusal to act.

There are cases where the commission issues no order, either affirmative or negative. The commission, finding there is nothing to be ordered in its view of the case, does not issue any order, and the

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litigant in whose case the commission does not issue any order finds himself outside all courts. He can not urge any question as to the facts in the case; he has no right, under the law, to urge such questions before any court. But I think as to the law he ought to have his day in court.

And I may say right here that the effect of the law as it stands upon the statute books now, giving jurisdiction to the court in affirmative orders and not giving any where there is no order issued at all, or where the order is a refusal of the petition—that in nearly all of the cases against whom an order is issued the party is the carrier, because when a railroad wants to change its rates there is a provision of law which requires it to file those rates with the commission and the commission determines as purely between the public generally and the company. And after the rates have been determined by the commission they become enforceable against the public, against all shippers, and when the shipper complains—and in almost every case the shipper is the complainant—that he is being overcharged there may be a refusal to issue an order, and in that event he is without day in court. When an order is issued upon the complaint of some community or upon the complaint of an individual shipper, the order, if any is given, is invariably against the carrier, and this carrier can always go to court with its proposition and have the law determined. So you can see in the operation of it to what great disadvantage the shipper is and what great advantage the carrier has in these controversies.

And I may add this, too: I have had a great number of letters and resolutions from commercial bodies throughout the country urging the adoption of this bill. A great number of them were filed by me in the hearings before the Committee on Interstate and Foreign Commerce last Congress, but I have never yet had one in which there is a denial of the justice of the proposition to give jurisdiction to the court over negative orders. I do not know of any commercial body anywhere in the country taking the position that that power ought not to be given to the Commerce Court. It has been agitated; it has been written about in almost every paper in the country, and my attention has not yet been called to any body of citizens, commercial or corporate, protesting against that power being given to the Commerce Court.

Mr. DUPRÉ. Did we not have a bill before us along that same line, introduced by Mr. Borland?

Mr. BROUSSARD. Yes; there was a bill introduced by Mr. Borland at about the same time I introduced my bill, and your committee reported favorably on it in the last Congress. I can not conceive of anyone being opposed to that jurisdiction being given to the Commerce Court. The commission certainly has never held it ought not to be given, and, as I said, I do not know of anybody who holds that it ought not to be granted.

The CHAIRMAN. Right in that connection let me state that the report to which you have referred was made in the second session of the Sixty-second Congress, being Report No. 1012, and made July 17, 1912.

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Mr. BROUSSARD. With the permission of the committee, I should like to embody that report in my remarks, so that it may appear in the hearings.

(Said report follows:)

[House Report No. 1012, Sixty-second Congress, second session.]

The Committee on the Judiciary, having had under consideration the bill (H. R. 25751) to amend an act entitled "An act to codify, revise, and amend the laws relating to the judiciary," approved March 3, 1911, and for other purposes, report the same back with the recommendation that it be amended as follows and that as amended the bill do pass.

In line 4 strike out the words "and so forth."

In line 7, after the word "seven," insert the following words: "and at the end."

Amend the title so as to read: "A bill to amend an act entitled 'An act to codify, revise, and amend the laws relating to the judiciary,' approved March 3, 1911."

The bill as thus amended will read as follows:

"That the act of Congress entitled 'An act to codify, revise, and amend the laws relating to the judiciary,' approved March third, nineteen hundred and eleven, be, and it is hereby, amended by adding to section two hundred and seven and at the end thereof the following: 'The court shall also have jurisdiction over all cases brought to correct any error of law made by the Interstate Commerce Commission in granting or refusing to grant relief in any proceeding before said commission.'"

This bill meets a defect in the law pointed out by the Supreme Court in its decision of June 7, 1912, in the case of Procter & Gamble Co. *v.* United States et al., No. 780, October term, 1911. Section 207 of the judiciary act of March 3, 1911, provides—

"First. All cases for the enforcement, otherwise than by adjudication and collection of a forfeiture or penalty or by infliction of criminal punishment, or any order of the Interstate Commerce Commission other than for the payment of money.

"Second. Cases brought to enjoin, set aside, annul, or suspend, in whole or in part, any order of the Interstate Commerce Commission."

Other clauses of the first section confer jurisdiction upon the Commerce Court to try certain cases there referred to; but so far as enforcement or enjoining the enforcement of orders of the commission is concerned the above-quoted paragraphs are all of the existing law.

When the commission declines to grant relief requested from it by shippers or other parties, it simply notes upon its record "petition dismissed." Procter & Gamble, shippers, at Cincinnati, Ohio, made complaint before the commission, complaining of certain provisions in tariffs of the railroad companies. The commission declined to grant the relief prayed for, and the shipper promptly went to the Commerce Court and asked for an injunction against the commission so far as was necessary to correct alleged errors of law committed by the commission.

The United States moved to dismiss the petition on the ground that the Commerce Court had no jurisdiction. In the opinion of the Commerce Court, it said:

"The jurisdiction of the court is denied on the ground that the petitioner is a shipper, and the Interstate Commerce Commission having merely dismissed the complaint which was made to it, and granted no affirmative relief, that there is nothing in the order of dismissal which it entered that affords any basis for action here. Or, in other words, that it is only the carrier against which an order is made in favor of the shipper that can bring the case for review into this court, the shipper being concluded by the action of the commission, whatever it may chance to be. This is a serious question, which merits careful consideration, and is not altogether easy to solve. * * *

"And while the dismissal of a complaint by the commission in a case like the present one may not in strictness be an order, in that it does not require or prohibit that anything shall or shall not be done, it is so in substance and effect, in that, by refusing to interfere with the practice or the charge complained of, it virtually approves it and makes it operative. If it was required by the act to hold that a court could not interfere with such an order, however con-

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fiscatory to the shipper it might be, the shipper being thus without legal redress, the act might well be declared unconstitutional, as wanting in due process of law.

"The action of the commission, if to be given any force, having thus the effect of an adverse decision with respect to the question involved, must be regarded, even though negative in character, as an order within the meaning of the statute, which the courts may enjoin or set aside if legal or equitable grounds for doing so are found to exist. The petitioner therefore correctly came into this court, as it could previously have gone into a circuit court of the United States—the requisite amount being involved and the case being one arising under the Federal law—to have the action of the commission dismissing its complaint set aside and the demurrage charge disallowed, if that should be the conclusion reached with regard to it, either by direct decree or by remanding the case to the commission with directions to sustain the complaint."

Having taken jurisdiction, the Commerce Court then entered a decree sustaining the commission's action. From this decree Procter & Gamble appealed to the Supreme Court, and that court, through the chief justice, in its opinion held that the Commerce Court had no jurisdiction of any save affirmative orders of the commission. After setting forth the two paragraphs of section 207 quoted above in this report, the court said:

"Giving to these words their natural significance, we think it follows that they confer jurisdiction only to entertain complaints as to affirmative orders of the commission; that is, they give the court the right to take cognizance when properly made of complaints concerning the legality of orders rendered by the commission and confer power to relieve parties in whole or in part from the duty of obedience to orders which are found to be illegal. No resort to exposition can add to the cogency with which the conclusion stated is compelled by the plain meaning of the words themselves. But if it be conceded for the sake of argument that the language of the provision is ambiguous a consideration of the context of the act will at once clarify the subject. Thus, the first subdivision provides for the enforcement of orders; that is, the compelling of the doing or abstaining from doing of acts embraced by a previous affirmative command of the commission; and the second (the one with which we are concerned) dealing with the same subject from a reverse point of view, provides for the contingency of a complaint made to the court by one seeking to prevent the enforcement of orders of the commission such as are contemplated by the first paragraph. In other words, by the cooperation of the two paragraphs, authority is given, on the one hand, to enforce compliance with the orders of the commission, if lawful, and, on the other hand, power is conferred to stay the enforcement of an illegal order."

It thus is plain that under existing law a shipper or other party who may not have secured an affirmative order from the commission can not invoke the jurisdiction of the Commerce Court to correct any errors of law made by the commission in dismissing a complaint.

The commission is not opposed to the bill which confers jurisdiction upon the Commerce Court to correct errors of law made by the commission. The position of the chairman of the commission is stated by him in a communication to the chairman of the Senate Committee on Interstate Commerce, and is as follows:

NEWPORT, VT., *July 6, 1912.*

Hon. MOSES CLAPP,
Chairman Interstate Commerce Committee,
United States Senate, Washington, D. C.

MY DEAR SENATOR: I am just in receipt of telegram from Luther M. Walter, of Chicago, urging me to write you recommending legislation by which the effect of the decision of the Supreme Court in the Procter & Gamble case, denying shippers the right of appeal, might be corrected.

In the Procter & Gamble case the court held that no proceeding would lie where the order of the commission was one dismissing the complaint. If, therefore, a shipper files complaint with the commission and the commission through an error of law dismissed the complaint and denied relief to which the complainant was entitled, no right of petition to the Commerce Court existed. Upon the other hand, if the commission through an error of law entered an order against the carrier, petition might be filed and the error corrected.

The effect of this was to deny the shipper relief against an error of law upon the part of the commission, while the carrier had in such cases an adequate remedy. I can not undertake to give you the opinion of the commission

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in this matter, since, while certain phases of the question presented have been discussed, no definite conclusion has been reached. My individual thought is this:

The Constitution protects the railroad against the confiscation of its property, and the railroad therefore properly has a remedy in court against an order of the commission which works a violation of the Constitution in this respect. The shipper is not entitled to any relief of this kind, since in the nature of things an order of the commission does not violate the Constitution by confiscating the property of the shipper.

Under the decisions of the Supreme Court a railroad may attack our orders upon three grounds:

A. Confiscation.
B. An error of law.
C. Arbitrary and unwarranted action.

It seems to me that in some form the shipper should be given the same measure of relief against an error of law upon the part of the commission which the railroad has. The commission is an administrative body. Its administrative judgment can not be properly reviewed by a court in any case.

Its decisions often involve mixed conclusions of law and of fact, and I believe that ordinarily such conclusions should not be reviewable by court process, either in favor of or against the shipper; but I personally feel that it is in the interest of justice and, above all, in the interest of the commission that errors of law committed by it should be corrected in the courts. It is not in my judgment a wise or a salutary thing to lodge in any tribunal arbitrary power beyond what is necessary, and I can see no reason why the legal mistakes of the Interstate Commerce Commission could not and should not be corrected.

I have not given the matter sufficient attention to make a suggestion of the exact manner in which this can best be done.

Very truly, yours, C. A. PROUTY.

Certainly it is not equitable that one party to a controversy before the commission should have the right to correct mistakes of law made by the commission while the other party is denied this right. It is therefore highly desirable that speedily the law should be corrected, so that the shippers of the country may invoke the judgment of the court upon the commission's construction of the Constitution or of the law.

The purpose of this amendment is to afford that relief to the shippers and the same measure of judicial review of the commission's action as is accorded the railroads at the present time.

Representatives of various shippers and commercial organizations have called attention to the defect in the law and have appeared before the committee, insisting upon immediate relief from the Procter & Gamble decision.

It has never been the purpose or the intent of Congress that the commission's interpretation of the law should be final in the sense that there could be no judicial review thereof. This, however, as to fact, is different.

The proposed bill protects the commission's findings of fact in negative orders to the same extent that they are now protected under affirmative orders. The commission's findings of fact are not to be disturbed by the court; and the only purpose and effect of the bill is to confer jurisdiction upon the Commerce Court, so that shippers will complain of the action of the commission in refusing to grant relief in whole or in part shall have the same opportunity to correct the commission's errors as is now afforded carriers who are the subjects of affirmative orders.

It is the purpose of this bill to put shippers on equal footing with the carriers in obtaining a review of the decisions of the Interstate Commerce Commission, and for this reason this bill ought to pass.

Mr. BROUSSARD. Section 8 makes the defendant in the Commerce Court to be the Interstate Commerce Commission instead of the United States. Under the present law the United States is being sued whenever there is an order issued instead of the commission, and that has resulted in this: That inasmuch as every suit brought against the United States must be defended by the Attorney General, immediately upon an order being issued the case is transferred directly to the control of the Attorney General instead of remaining in the commission, which has counsel provided by law, and doubtless the

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law is interpreted for the commission by the counsel, counsel specially employed, with a view to advising the commission as to what the law has been or is in regard to questions of transportation. Instead of such counsel taking charge of the case being in close contact with the commission, whose interest is the public interest, and who wants to see its orders enforced, the case is shifted to the Attorney General's office, busy as the Attorney General's office may be. The Attorney General has been compelled to employ special counsel for these cases, and, of course, while it has resulted all right, it has brought about some confusion in certain cases. The commission having adopted the views of its own counsel with regard to issuing an order, believe that such counsel should defend the order before the court, while the Attorney General, when a case comes before him, brought against the United States, may take a different view of the law, and under such circumstances you have two sets of attorneys representing two branches of the Government not cooperating. I do not mean to say they oppose one another, but they have different views of the law, which leads to some embarrassment in the matter. And there has been some contention on the part of interested parties that this condition ought to be relieved.

The CHAIRMAN. How does this bill deal with that subject?

Mr. BROUSSARD. When the commission issues an order and an injunction is sued out against it, instead of being sued out against the United States it is sued out against the Interstate Commerce Commission, and the men who have advised the commission will take charge of the case. The United States can intervene where it has an interest involved. The Railroad Commission of Louisiana intervened in the Tap Line cases, and in this bill the right is reserved to the Attorney General to intervene in a suit where there is a great question affecting the entire community and the Attorney General, in his judgment, thinks the aid of his office ought to be given to the commission. But primarily the contest is between the party against whom the order has been issued by the commission and the commission itself, and when the commission sues to enforce its own orders it becomes the complainant instead of suing in the name of the United States, and in that way uniformity is obtained, and the defense or the prosecution of suits involving the findings of the Interstate Commerce Commission remains in the party which started the proceedings instead of shifting from one department to the other, and thus both parties enabled to enforce its own conclusions of law in a case in which there ought to be unity in both prosecution and defense. Of course, this does not deprive the Government of any of its rights where the issue is of such import as to warrant the Attorney General in taking part. He becomes an intervener in the suit, just as a shipper may become an intervener in a suit against a railroad where a shipper feels his interest is one way or the other in the controversy.

Section 9 provides for the commission to preserve record of proceedings and make findings of fact and conclusions of law; the former are conclusive on courts, if the commission had before it evidence to support its findings. This seeks to segregate the facts as determined by the commission, which under the law are not reviewable by the court and ought not to be reviewable, and the law upon which an order is issued, which is a reviewable order under the law; in other words, to give jurisdiction to the court to entertain both an affirma-

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tive and a negative order or a refusal to grant an order, but to separate the facts determined by the commission and the law upon which the order issued or upon which the commission has refused to grant an order.

Mr. McCoy. In line 24, page 10, why do you put in the words "including inferences and conclusions of fact upon undisputed evidence"? Why would it not do to make it read "and such findings of facts shall be conclusive upon all courts"?

Mr. Broussard. You mean to strike out the words "including inferences and conclusions of fact upon undisputed evidence"?

Mr. McCoy. I do not see what that adds.

Mr. Broussard. I really do not see that it does add anything.

Mr. Denison. I suggested that to Mr. Broussard because of a decision of the Commerce Court that where all the details of a great mass of facts were undisputed, the conclusion to be drawn from those details was a question of law, even though it might be merely the question of the reasonableness of a rate, which, in my view, and, I think, in the view of the commission, is a conclusion of a fact, although all the individual items of fact are admitted. What the ultimate fact is, whether, for instance, the rate is reasonable or not, is still a conclusion of fact and not a question of law, and to avoid any questions on that point, such as did arise in the Commerce Court and were held against us, I thought there should be that clause inserted.

Mr. Broussard. The twelfth section, which is the last one, except the repealing clause, gives the right to intervene before the Commerce Court to all parties at interest—shippers, associations, and the like.

Now, just one word more before I conclude my remarks. I would like, with the permission of the committee, to include in my statement a copy of the bill known as the Sims bill, H. R. 5611. The purpose of this bill is to abolish the Commerce Court. That is the title of it, and I want to get it in this record.

(Said bill follows:)

[H. R. 5611, Sixty-third Congress, first session.]

A BILL To abolish the Commerce Court, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Commerce Court, created and established by the act entitled "An act to create a Commerce Court and to amend the act entitled 'An act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, as heretofore amended, and for other purposes," approved June eighteenth, nineteen hundred and ten, be, and the same hereby is, abolished and the jurisdiction vested in said Commerce Court by said act is hereby transferred to and vested in the several district courts of the United States.

The venue of any suit hereafter brought to enforce, suspend, or set aside, in whole or in part, any order of the Interstate Commerce Commission shall be in the judicial district where some or all of the transportation covered by the order has either its origin or destination, except that where the order does not relate to transportation the venue shall be in the district where the matter complained of in the petition before the commission arises, and except that where the order does not relate either to transportation or to a matter so complained of before the commission the matter covered by the order shall be deemed to arise in the district where one of the petitioners in court has either its principal office or its principal operating office. In case such transportation relates to a through shipment the term "destination" shall be construed as meaning final destination of such shipment.

The procedure in the district courts in respect to cases of which jurisdiction is conferred upon them by this act shall be the same as that heretofore pre-

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vailing in the Commerce Court. The writs and processes of the district courts may in these cases be issued to any place within the United States; and the right of appeal from the district courts in such cases shall be the same as the right of appeal heretofore prevailing under existing law from the Commerce Court. No preliminary injunction, or restraining or stay order, suspending the enforcement, operation, or execution of, or setting aside, in whole or in part, any order made or entered by the Interstate Commerce Commission shall be issued or granted by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, unless the application for the same shall be presented to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a circuit judge, and the other two may be either circuit or district judges, and unless a majority of said three judges shall concur in granting such application. When such application as aforesaid is presented to a judge, he shall immediately call to his assistance to hear and determine the application two other judges. Said application shall not be heard or determined before at least five days' notice of the hearing has been given to the Interstate Commerce Commission, to the Attorney General of the United States, and to such other persons as may be defendants in the suit. The hearing upon such application shall be given precedence, and shall be in every way expedited and be assigned for a hearing at the earliest practicable day after the expiration of the notice hereinbefore provided for. An appeal may be taken direct to the Supreme Court of the United States from the order granting, after notice and hearing, a preliminary injunction, or restraining or stay order, in such case; and upon the final hearing of any suit brought to suspend or set aside, in whole or in part, any order of said commission the same requirement as to judges and the same procedure as to expedition and appeal shall apply. The provisions of this section shall also apply to the issuing and granting of preliminary injunctions and restraining or stay orders suspending the enforcement, operation, or execution of, or setting aside, orders made by any administrative board or commission created by and acting under the statute of a State. And in such case the notice required shall be served upon the defendants in the case and upon the attorney general of the State. All cases pending in the Commerce Court at the date of the passage of this act shall be deemed pending in and be transferred forthwith to said district courts. Each of said cases and all the records, papers, and proceedings shall be transferred to the district court wherein it might have been filed at the time it was filed in the Commerce Court if this act had then been in effect; and if it might have been filed in any one or two or more district courts it shall be transferred to that one of said district courts which may be designated by the petitioner or petitioners in said case, or, upon failure of said petitioners to act in the premises within ten days after the passage of this act, to such one of said district courts as may be designated by the judges of the Commerce Court. The judges of the Commerce Court shall have authority, and are hereby directed, to make any and all orders and to take any other action necessary to transfer as aforesaid the cases and all the records, papers, and proceedings then pending in the Commerce Court to said district courts, and in this connection may employ such person or persons to assist them as may be necessary, who shall be paid, out of any moneys in the Treasury of the United States not otherwise appropriated, upon vouchers approved by any of the judges of the Commerce Court.

SEC. 2. That all laws or parts of laws inconsistent with this act are repealed.

The CHAIRMAN. You want to include in your statement, so it may be printed as part of the hearing, your bill H. R. 5902.

Mr. BROUSSARD. Yes, sir; I do.

The CHAIRMAN. So that both of those bills will be included.

(Said bill follows:)

[H. R. 5902, Sixty-third Congress, first session.]

A BILL To relieve the Supreme Court and to extend the jurisdiction of the Commerce Court, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act of Congress entitled "An act to codify, revise, and amend the laws relating to the judiciary," approved March

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third, nineteen hundred and eleven, be, and the same is hereby, amended as follows:

SECTION 1. That section two hundred and forty-four of the said act is hereby transferred to follow section two hundred and seven and is numbered two hundred and seven a, and amended so as to read as follows:

"SEC. 207a. Writs of error and appeals from the final judgments and decrees of the Supreme Court of, and the United States District Court for, Porto Rico shall be taken and prosecuted to the Commerce Court of the United States in any case wherein is involved the validity of any copyright or in which is drawn in question the validity of a treaty or statute or of authority exercised under the United States, or wherein the Constitution of the United States or a treaty thereof or an act of Congress is brought in question, without regard to the sum or value of the matter in dispute, and in all other cases in which the sum or value of the matter in dispute, exclusive of costs, to be ascertained by the oath of either party or of other competent witnesses, exceeds the sum or value of $5,000. Such writs of error and appeals shall be taken within the same time, in the same manner, and under the same regulations as writs of error and appeals are now taken to the courts of appeals of the United States from the district courts."

SEC. 2. That section two hundred and forty-eight of the act is hereby transferred to follow section two hundred and seven a and is numbered section two hundred and seven b, and amended to read as follows:

"SEC. 207b. The Commerce Court of the United States shall have jurisdiction to review, revise, reverse, modify, or affirm the final judgments and decrees of the Supreme Court of the Philippine Islands in all actions, cases, causes, and proceedings now pending therein or hereafter determined thereby in which the Constitution or any statute, treaty, title, right, or privilege of the United States is involved, or in causes in which the value in controversy exceeds $25,000, or in which the title or possession of real estate exceeding in value the sum of $25,000, to be ascertained by the oath of either party or of other competent witnesses, is involved or brought in question; and such final judgments or decrees may and can be reviewed, revised, reversed, modified, or affirmed by said Commerce Court on appeal or writ of error by the party aggrieved in the same manner and under the same regulations and by the same procedure, as far as applicable, as the final judgments and decrees of the district courts of the United States."

SEC. 3. That there shall be added a section, to be known as section two hundred and seven c, to read as follows:

SEC. 207c. The Commerce Court shall have jurisdiction to review, revise, modify, reverse, or affirm the final judgments and decrees of the District Court of the Canal Zone and to render such judgments as in the opinion of the said appellate court should have been rendered by the trial court in all actions and proceedings in which the Constitution or any statute, treaty, title, right, or privilege of the United States is involved and a right thereunder denied, and in cases in which the value in controversy exceeds $1,000, to be ascertained by the oath of either party or by other competent evidence, and also in criminal causes wherein the offense charged is punishable as a felony. And such appellate jurisdiction, subject to the right of review by or appeal to the Supreme Court of the United States as in other cases authorized by law, may be exercised by said Commerce Court in the same manner, under the same regulations, and by the same procedure as nearly as practicable as is done in reviewing the final judgments and decrees of the district courts of the United States."

SEC. 4. That section two hundred and fifty-one of the said act is hereby amended so as to read as follows:

"SEC. 251. In any case in which the judgment or decree of said court of appeals is made final by the section last preceding, and in any case determined by the Commerce Court, it shall be competent for the Supreme Court of the United States to require, by certiorari or otherwise, any such case to be certified to it for its review and determination, with the same power and authority in the case as if it had been carried by writ of error or appeal to said Supreme Court. It shall also be competent for said court of appeals, in any case in which its judgment or decree is made final under the section last preceding or for the Commerce Court in any case before it, at any time to certify to the Supreme Court of the United States any questions or propositions of law concerning which it desires the instruction of that court for their proper decision; and thereupon the Supreme Court may either give its instruction on the questions and propositions certified to it, which shall be binding upon said court of appeals below in such case, or it may require that the whole record and cause

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be sent up to it for its consideration, and thereupon shall decide the whole matter in controversy in the same manner as if it had been brought there for review by writ of error or appeal: *Provided*, That nothing in this act contained shall be construed in any way to affect the right of appeal now existing from any official judgment or decree of the Commerce Court to the Supreme Court of the United States, as is now provided for in an act entitled 'An act to create a Commerce Court and to amend the act entitled "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, as heretofore amended, and for other purposes,' duly approved June eighteenth, nineteen hundred and ten."

SEC. 5. That section two hundred and fifty-two of the said act is hereby transferred to follow section two hundred and seven c and is numbered section two hundred and seven d, and amended to read as follows:

"SEC. 207d. The jurisdiction vested in the Supreme Court of the United States and the justices thereof by the bankruptcy act of July first, eighteen hundred and ninety-eight, and the amendments thereof, is hereby transferred to and vested in the Commerce Court and the judges thereof."

SEC. 6. That section two hundred shall be amended to read as follows:

"SEC. 200. There shall be a court of the United States, to be known as the Commerce Court, which shall be a court of record and shall have a seal of such form and style as the court may prescribe. The said court shall be composed of five judges, to be from time to time designated and assigned thereto by the Chief Justice of the United States from among the circuit judges of the United States for the period of five years, except that in the first instance the court shall be composed of the five additional circuit judges referred to in the next succeeding section, who shall be designated by the President to serve for one, two, three, four, and five years, respectively, in order that the period of designation of one of the said judges shall expire in each year thereafter. In case of the death, disability, resignation, termination of assignment, or temporary assignment to other judicial service of any judge of the Commerce Court, or in case of a relinquishment of assignment approved by the Chief Justice of the United States the Chief Justice shall designate a circuit judge to fill the vacancy so caused and to serve during the unexpired period, or any part thereof, for which the original designation was made. After the year nineteen hundred and sixteen no circuit judge may be redesignated to serve in the Commerce Court for the period immediately after the expiration of the period of his last previous designation. The judge first designated for the five-year period shall be the presiding judge of the said court, and thereafter the judge senior in designation shall be the presiding judge. The associate judges shall have precedence and shall succeed to the place and powers of the presiding judge whenever he may be absent or incapable of acting in the order of the date of their last designations, except that such five additional judges during the time of their original designations and any subsequent designation made during or prior to the year nineteen hundred and sixteen shall have such precedence and succession in the order of the length of their original designations. Three of said judges shall constitute a quorum, and at least a majority of the court shall concur in all decisions. Each of the judges during the period of his service in the Commerce Court shall, on account of the regular sessions of the court being held in the city of Washington, receive in addition to his salary as circuit judge an expense allowance at the rate of $1,500 per annum."

SEC. 7. That section two hundred and seven shall be amended to read as follows:

"SEC. 207. That the Commerce Court shall have jurisdiction possessed by circuit courts of the United States and the judges thereof immediately prior to June eighteenth, nineteen hundred and ten, over all cases of the following kinds:

"First. All cases for the enforcement, otherwise than by adjudication and collection of a forfeiture or penalty or by infliction of criminal punishment, of any order of the Interstate Commerce Commission other than for the payment of money.

"Second. Cases brought to enjoin, set aside, annul, or suspend in whole or in part any order of the Interstate Commerce Commission, including negative orders dismissing complaints filed before the commission, but not including orders for the payment of money: *Provided, however*, That the provisions of this paragraph shall not be so construed as to give the court the right to sub-

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stitute its judgment for the judgment of the commission as to matters which are either administrative or legislative in character.

"Third. Such cases as by section three of the act entitled 'An act to further regulate commerce with foreign nations and among the States,' approved February nineteenth, nineteen hundred and three, are authorized to be maintained in a circuit court of the United States.

"Fourth. All such mandamus proceedings as under the provisions of section twenty or section twenty-three of the act entitled 'An act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, as amended, are authorized to be maintained in a circuit court of the United States; and all such mandamus proceedings as may be brought to review any action of the Interstate Commerce Commission or any refusal to act.

"Nothing contained in this chapter shall be construed as enlarging the jurisdiction now possessed by the district court of the United States or the judges thereof that is hereby transferred to and vested in the Commerce Court.

"The jurisdiction of the Commerce Court over cases of the foregoing classes shall be exclusive, but this chapter shall not affect the jurisdiction now possessed by any district court of the United States over cases or proceedings of a kind not within the above-enumerated classes."

SEC. 8. That section two hundred and eight of the said act is hereby amended so as to read as follows:

"SEC. 208. Suits to enjoin, set aside, annul, or suspend any order of the Interstate Commerce Commission shall be brought in the Commerce Court against the Interstate Commerce Commission. The pendency of such suit shall not of itself stay or suspend the operation of the order of the Interstate Commerce Commission; but the Commerce Court, in its discretion, may restrain or suspend, in whole or in part, the operation of the commission's order pending the final hearing and determination of the suit. No order or injunction so restraining or suspending an order of the Interstate Commerce Commission shall be made by any court or judge except upon hearing, after five days' notice to the commission, and upon a specific finding contained in the order that the validity of the commission's order is seriously doubtful and that the irreparable injury to the petitioner from its enforcement pendente lite would be substantially greater than the irreparable injury to the beneficiaries of the order from its suspension."

SEC. 9. That there shall be added a section, to be known as section two hundred and eight a, to read as follows:

"SEC. 208a. The Interstate Commerce Commission shall preserve the record of its proceedings, including the testimony taken before it, and upon making its determinations or orders shall make and file as part of its reports its findings of fact and its conclusions of law; and such findings of fact, including inferences and conclusions of fact upon undisputed evidence, shall be conclusive upon all courts, provided that there was before the commission evidence to support them."

SEC. 10. That section two hundred and nine of the said act is hereby amended so as to read as follows:

"SEC. 209. The original jurisdiction of the Commerce Court shall be invoked by filing in the office of the clerk of the court a written petition setting forth briefly and succinctly the facts constituting the petitioner's cause of action, and specifying the relief sought, and containing as exhibit or otherwise a copy of the report and order of the commission which is concerned. A copy of such petition shall be forthwith served by the marshal or a deputy marshal of the Commerce Court or by the proper United States marshal or deputy marshal upon every defendant therein named, and when the Interstate Commerce Commission is a party defendant the service shall be made by filing a copy of said petition in the office of the secretary of the Interstate Commerce Commission and in the Department of Justice. Within twenty days after the petition is served, unless that time is extended by order of the court or a judge thereof, an answer to the petition shall be filed in the clerk's office and a copy thereof mailed to the petitioner's attorney, which answer shall briefly and categorically respond to the allegations of the petition. No replication need be filed to the answer, and objections to the sufficiency of the petition or answer as not setting forth a cause of action or defense must be taken at the final hearing or by motion to dismiss the petition based on said grounds, which motion may be made at any time before answer is filed. In case no answer shall be filed, as provided herein, the petitioner may apply to the court on notice for such relief as may be proper upon the facts alleged in the petition. The court may, by

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rule, prescribe the method of taking evidence in cases pending in said court, and may prescribe that the evidence be taken before a single judge of the court, with power to rule upon the admission of evidence. Except as may be otherwise provided in this chapter, or by rule of the court, the practice and procedure in the Commerce Court shall conform as nearly as may be to that in like cases in a district court of the United States."

SEC. 11. That section two hundred and eleven shall be amended to read as follows:

"SEC. 211. All cases and proceedings brought on behalf of the Interstate Commerce Commission or in support of its orders shall be brought by and in the name of the commission, and all cases brought to review any of its orders or determinations shall be brought against it; and the commission, by its own counsel, shall have charge of and conduct such cases and proceedings on behalf of the commission, at all stages thereof, in any court: *Provided*, That whenever in the opinion of the Attorney General the public interests are involved, the United States may, by the Attorney General, intervene in any case or proceeding whatever and at any stage thereof, whether in the Commerce Court, the Supreme Court, or any other court."

SEC. 12. That section two hundred and twelve shall be amended to read as follows:

"SEC. 212. Any party or parties in interest to the proceedings before the commission, in which an order or requirement is made, may appear as parties thereto of their own motion and as of right, and be represented by their counsel, in any suit wherein is involved the validity of such order or requirement or any part thereof, and the interest of such party; and the court wherein is pending such suit may make all such rules and orders as to such appearances and representations, the number of counsel, and all matters of procedure, and otherwise, as to subserve the ends of justice and speed the determination of such suits: *Provided*, That communities, associations, corporations, firms, and individuals who are interested in the controversy or question before the Interstate Commerce Commission, or in any suit which may be brought by anyone under the provisions of this chapter, or the acts of which it is amendatory or which are amendatory of it, relating to action of the Interstate Commerce Commission, may intervene in said suit or proceedings at any time after the institution thereof; and the commission shall not dispose of or discontinue said suit or proceeding over the objection of such party or intervener aforesaid, but such intervener or interveners may prosecute, defend, or continue said suit or proceedings unaffected by the action or nonaction of the commission therein."

SEC. 13. That all acts and parts of acts in conflict with the provisions of this act be, and the same are hereby, repealed: *Provided*, That any case or proceeding, original or appellate, over which the Commerce Court is hereby given jurisdiction, which may be pending or have been begun in any other court before the date upon which this act shall become effective, shall be forthwith transferred to the Commerce Court if it has not yet proceeded to final judgment or decree in such other court, unless it has been finally submitted for the decision of such court, in which case the cause shall proceed in such court to final judgment or decree and further proceeding thereafter, and if remanded, such cause may be sent back to the court from which the appeal was taken, or to the Commerce Court for further proceeding, as the Supreme Court shall direct; and all previous proceedings in such transferred case shall stand and operate notwithstanding the transfer, subject to the same control over them by the Commerce Court, and to the same right of subsequent action in the case or proceeding as if the transferred case or proceeding had been originally begun in or appealed to the Commerce Court. The clerk of the court from which any case or proceeding is transferred to the Commerce Court shall transmit to and file in the Commerce Court the originals of all papers filed in such case or proceeding and a certified transcript of the record entries in the case or proceeding up to the time of the transfer.

Mr. BROUSSARD. I want to get Mr. Sims's bill in this record for this reason: Of course, it is no great concern of mine what committee shall have jurisdiction over this bill. My own opinion is that this committee has jurisdiction of the bill. It has been referred to the Committee on Interstate and Foreign Commerce, and my reason for believing that it belongs to this committee and not to the other com-

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mittee is because it proposes to abolish a court and to take the jurisdiction of that court and vest it in other courts. It seems to me it is a question relating to the judiciary. Mr. Sims takes the position that inasmuch as the Interstate Commerce Committee created the Commerce Court that its abolishment must be through the same channel. With regard to its reference, however, it is only fair to those who defend the abolishment of the court that the process under which they propose to do it should be submitted to the Judiciary Committee, which is the committee of the House that is selected especially with regard to the qualifications of its members as lawyers to pass upon questions of law and of jurisdiction of courts.

The CHAIRMAN. And procedure as well.

Mr. BROUSSARD. Yes. I do not think there is any demand anywhere in this country for the abolishment of the Commerce Court. There has been no resolution of any commercial body anywhere to which my attention has been called for the abolishment of the court. The shippers of the country, who probably would have more right to complain of the conditions and who are prevented under the law from presenting their questions of law for determination in any court in the land, might complain, yet we have numerous petitions directed to Congress asking that this bill introduced by Mr. Sims be not adopted. Commercial bodies from all sections of the country, commercial journals, and others oppose the abolishment of the court. The commission has not asked for the abolishment of this court; the Attorney General has not asked for it; the President has not asked for it; in fact, I can not conceive of anyone who would want this court abolished in which questions of transportation could be quickly determined, especially when the life of a community may depend upon just competition where different rates are established to some point, driving one community clean out of the market and building up another community through some action on the part of a carrier—I can not conceive of anyone who would want a court abolished that has expedited the determination of these decisions between communities struggling for existence, one against the other, or between individual shippers in the country struggling in the field of competition to supplant their rivals in the same business.

The only possible demand there is for it might be from the carriers. I do not say that it does come from them, but the only possible complaint to the existence of a special court to expedite these differences—the determination of these questions—might come from the carriers, and the reason I say that is this: That under the old system, before the creation of this court, it required on an average nearly two years to determine as to who was right as to rates fixed between competing points or between individuals engaged in competition in transportation from a common point where they have competitors, while in the Commerce Court, according to the report of the Attorney General, it has required less than two-thirds of one year on an average to determine these cases. Therefore the shipper has a court in which his rights are determined three times as fast under the present system as under the old system. Certainly a shipper does not want to be dragged into a litigation extending over two years when the orders of the commission itself have a life no longer than two years. Of course, I can conceive that the railroads

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might want that changed, because under the terms of the Sims bill a railroad against whom an order is issued by the commission, instead of coming to a central court, located right next to the commission, they can go into any court where its line extends and can invoke the power of the court in that jurisdiction to enjoin the work of the commission. It is optional with the railroad what court it will select, and naturally it would select the most encumbered docket it could find to exercise jurisdiction over its controversy, and in that way could prevent the early determination of the issues between itself and the complaining shipper. When a shipper had already secured an order from the commission, it would enable the railroad to hide behind a crowded docket in some district far from the Capital and compel the Interstate Commerce Commission and the Attorney General to send its officers and attorneys to that distant point in order to try the case.

It was bad enough when these cases, under the old system and before the creation of the Commerce Court, could go into 9 circuits in the United States, but the Sims bill provides an opportunity to go into 80 different districts in the United States to present these injunctions. It would be impossible to consolidate cases, such as the Intermountain cases have been consolidated and such as the Tap Line cases have been consolidated; and instead of having the same issue presented in a dozen or more cases, as would be done in these two instances I have spoken of, and having that issue tried quickly and gotten rid of quickly, there would be many cases brought in many districts which, I am sure, all will concede would not be as satisfactory as having all of the cases consolidated and presented together.

I have heard it stated by no less a personage than the chairman of the Interstate Commerce Commission—and I think I violate no confidence in mentioning this—that in one case pending before that commission it could have gone into every jurisdiction from Seattle to New York—that some controversy growing out of some order could have gone into every district court from Seattle to New York; yet by having the Commerce Court all of these orders can come into one court; there they are consolidated, tried, quickly disposed of, and go to the Supreme Court for final determination. So, as I said, I do not know of any public demand for the abolishment of this court, either in the press of the country, through the commercial bodies of the country, the shippers, or even the railroads. On the contrary, the shipper wishes to expedite the determination of the suits, but if they hang for a great length of time they bring about hardships to the community that complains or to the individual shipper who complains.

I have here just a couple of documents that I would like to make a part of this hearing. Later on, if the chairman will permit me, I will secure from the printed records of the hearings before the Interstate and Foreign Commerce Committee the indorsements of this dual jurisdiction, or, rather, this jurisdiction over negative orders, as they were filed with the committee last Congress.

The CHAIRMAN. Without objection, Mr. Broussard, just hand such documents to the stenographer as you want included in your remarks, and they will be incorporated.

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Mr. BROUSSARD. All right. Here is one from the Merchants and Manufacturers' Association of Baltimore that I have just received:

MERCHANTS & MANUFACTURERS ASSOCIATION,
Baltimore, June 9, 1913.

Hon. ROBERT F. BROUSSARD,
Washington, D. C.

DEAR SIR: It is with pleasure that I advise you that the executive committee of this organization unanimously approved of H. R. 4765, being a bill introduced by you in the House of Representatives of the United States.

Very truly, yours,

ROBERT J. BEACHAM, *Secretary.*

Telegram from the National Lumber Manufacturers' Association, which came to me a few days ago:

KANSAS CITY, MO., *June 4, 1913.*

Hon. R. F. BROUSSARD,
House of Representatives, Washington, D. C.:

Convention of National Lumber Manufacturers' Association, representing annual shipments of 500,000 cars, has just adopted following resolution:

"*Resolved*, That we strongly favor retention of Commerce Court and urge sufficient appropriation therefor; provide it the given jurisdiction over negative orders of Interstate Commerce Commission, as provided in Broussard bill, in order to afford relief to shippers as well as railroads; and further

"*Resolved*, That we strongly urge appropriation, in any event, to continue Commerce Court until action taken by Congress on Broussard bill, No. 4765."

NATIONAL LUMBER MANUFACTURERS' ASSOCIATION,
J. E. RHOADES, *Secretary.*

The CHAIRMAN. Here are some telegrams that came to the chairman. You might look them over and use such as you think you want.

Mr. McCOY. Did the Interstate Commerce Committee make any report?

Mr. BROUSSARD. No, sir. The Procter & Gamble decision occurred late in the last session, and the hearings extended to within the time when all committees ceased to make reports, so that the bill died with the end of the session. While these hearings were going on Mr. Borland, of Missouri, introduced a bill, and my bill is practically the same as his: there was very little difference in the wording of it. This committee favorably reported the Borland bill, but too late for its consideration at the last session.

The CHAIRMAN. There was this difference, however, between your bill and the Borland bill, that your bill enlarges the subject matter of the jurisdiction of the Commerce Court; it extends it over a broader field than the Borland bill did.

Mr. BROUSSARD. My bill does all that the Borland bill proposed to do, and then it makes the Commerce Court a supreme court for such cases as under the Constitution can be determined by some other appellate court than the Supreme Court of the United States.

The CHAIRMAN. Cases from the Canal Zone and cases from Porto Rico and the Philippines?

Mr. BROUSSARD. Yes; and bankruptcy cases; and I am not so sure but what it might be wise to include cases arising from the Court of Claims. The Constitution requires a majority of the Supreme Court to constitute a quorum, and if our business continues to grow and our commerce increases I can not see how we are going to relieve that court unless we take away from it the consideration of the class of

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cases I have mentioned; and I think we should give the Commerce Court the power to finally adjudicate them, because the business must continue to grow and those cases become more numerous. The appointment of additional judges on the supreme bench is not going to relieve the situation, because the Constitution makes a majority of the court constitute a quorum, so that at least a majority of the court must sit together when a case is being tried and argued; they can not divide the work. I do not say this in any criticism of the supreme court of my own State, but in the recent election there the criticism was made that the Supreme Court of Louisiana had become a one-judge court, that one case was argued and then assigned to one judge and another case assigned another, and there was complaint as to that method; but the Constitution provides that the Supreme Court of the United States shall have a quorum of the court, and a quorum is a majority of the court, and, therefore, you can not subdivide that work, because in order to have a quorum there must be a majority of the court working at the same time upon the same cases before it. So that the appointment of additional judges to the court will not relieve us of a situation of having more than a year's work upon the docket when the court adjourned day before yesterday.

I think last year they decided, my information is, 574 cases, and they left 609 cases yet to be determined. So there is more than one year's work to be done. There are 40 or 50 cases which my bill would take from them, probably 50 or 60, and I think if it should be determined to include the Court of Claims cases you might be able to take 50 or 60 more, and then gradually get the court right up to its docket. The business of that court has increased, and it must necessarily continue to increase as the country develops and population increases and commerce increases, and there should be a remedy found. In my judgment the remedy is not to amend the Constitution or to have additional judges appointed, but to take away from that court all of the cases that it is possible to take away and give them to another court. So that if this bill were ever to become a law the Commerce Court would cease to be what it is now termed, "a commerce court," but it would have all the jurisdiction of the Commerce Court, and the added jurisdiction that is proposed under the Borland bill and my last year's bill. In addition to that jurisdiction I thought it would be well to make it a final court for certain classes of cases, and to send certain cases to it rather than to the Supreme Court, and thus relieve the Supreme Court of the burden of having such a heavy docket as to make it impossible for them to keep up with its business.

Here is a telegram from Kansas City, Mo., addressed to the chairman, which I would like to make a part of these minutes:

KANSAS CITY, MO., *June 17, 1913.*

Hon. H. D. CLAYTON,
Chairman House Judiciary Committee, Washington, D. C.:

Please give most careful consideration to Broussard bill, 5902, in committee hearing to-morrow. I consider this legislation extending jurisdiction of Commerce Court of great importance, and trust you will heartily favor its enactment.

J. B. WHITE.

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Another one from Kansas City and one from St. Louis:

KANSAS CITY, MO., *June 17, 1913.*

Hon. H. D. CLAYTON,
Chairman Judiciary Committee, House of Representatives,
Washington, D. C.:

On behalf of mill and lumber companies in which I am interested, and also on behalf of numerous shippers in the Southwest, I urge the favorable consideration by your committee of Broussard bill, H. R. 5902. The continuation and the extension of the jurisdiction of the Commerce Court is of vital importance to us in the Southwest. We have experienced the inconvenience and delay of going into various district courts, and also the inability to get redress before the commission upon dismissal of our petitions.

R. A. LONG.

ST. LOUIS, MO., *June 17, 1913.*

Mr. H. D. CLAYTON,
Chairman House Judiciary Committee,
Washington, D. C.:

Lumbermen's Club, St. Louis, wishes to go on record as in favor of Broussard's bill, H. R. 5902, which comes before your committee to-morrow. Club hopes committee will act favorably, as we believe scope of Commerce Court should be enlarged and shippers shown same privileges as railroads.

O. A. PIER, *Secretary.*

There are a good many others that have come here, and later, as we proceed, I will get all of them together and put them in the hearings.

The CHAIRMAN. Very well.

Mr. BROUSSARD. I thank you very much for your attention, gentlemen.

STATEMENT OF LUTHER M. WALTER, ESQ.

The CHAIRMAN. Give your name and address to the reporter, please.

Mr. WALTER. Luther M. Walter, Chicago. I had the pleasure of appearing before you last July in support of the Borland bill, which was reported, but immediately after that took place the House Committee on Interstate and Foreign Commerce held hearings lasting over the most of two weeks on similar matters, but nothing was done by way of a report.

I just want to add to what was said by Representative Broussard, that unless this committee has jurisdiction of matters dealing with the jurisdiction of the courts, then other committees of the House that deal with substantive legislation might say what the Congress could do on matters affecting its jurisdiction, and you would find yourselves relieved unless it be as to the salaries and tenure of the judges and the tenure is fixed by the Constitution, and the Committee on Appropriations might take care of the salaries of the judges. I am convinced that this is the proper committee for the legislation, and was at that time, but because of the hearing called by the Committee on Interstate and Foreign Commerce we, of course, were ready to present our side, and did present it.

And I may say that if an examination is made of the hearing in the Senate, which was on the Borland bill—I do not know what the docket number is—and of the printed hearings before the House Committee on Interstate and Foreign Commerce, you will find that there was no objection from any source to this negative jurisdiction,

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so called, except the vague idea that in conferring jurisdiction to review negative orders as to questions of law you might in some way make it possible to investigate facts that had been before the commission, and that the commission did not want done, nor did the shippers of the country care to have purely questions of fact reviewed by any court. Mr. Broussard well stated that under the present procedure an affirmative order is directed against the carrier, and that order can be taken into court by anybody affected thereby, but when the petition is dismissed the shipper is absolutely helpless, no matter what construction of the statute is made by the Interstate Commerce Commission and no matter how arbitrary and without foundation the decision may be.

In your report on H. R. 25751 last year you will find a letter from Commissioner Prouty. I will just quote one paragraph from that letter, in which he says:

> It is not, in my judgment, a wise or salutary thing to lodge in any tribunal arbitrary power beyond what is necessary, and I can see no reason why the legal mistakes of the Interstate Commerce Commission could not and should not be corrected.

Now, that is my understanding of Mr. Prouty's view and of the Interstate Commerce Commission's view of the question of appeal.

There is an appeal from affirmative orders, but on negative orders or orders of dismissal there is no appeal, and in that question of appeal from negative orders we are deeply interested. When I appeared before this committee last year I called attention to the conditions that existed in reference to the cases known as the Tap Line cases. I called attention to the fact that the Interstate Commerce Commission had decided that out of 99 industrial yellow-pine lumber railroads 36 were not performing a service of transportation by a common-carrier railroad subject to the act to regulate commerce; that is, that they were not common carriers of traffic and were not therefore entitled to participate in a joint rate with common carriers. We carried that question to the Commerce Court for review because we were confident that there was a misconception on the part of the Interstate Commerce Commission of the provisions of the act to regulate commerce, particularly of the commodities clause, because that section of the act applicable to this situation, and known as the commodities clause, was fully argued and debated in Congress, and was intended to cover precisely this condition. On this appeal we were met by the decision of the Supreme Court of the United States known as the Procter & Gamble decision.

I do not think that this Procter & Gamble decision is susceptible to the interpretation that the Commerce Court placed upon it, but, however that may be, our people were left without remedy, and we came to Congress for relief. You speedily reported a measure, following the Procter & Gamble decision, that would have given us relief, but no legislation was enacted by Congress. Now, in that case, the commission, in order that we might take the question up for review, amended the order so as to forbid the trunk lines from making joint rates with these industrial lines. We then went into the Commerce Court, and in that court we were met with a motion to dismiss for want of jurisdiction on the ground that it was still a negative order. While the argument in that case has been had and the testimony taken—we have spent $3,500 for printing the record

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in that case—and although the court has denied the motion to dismiss, we are still as yet resting under this cloud. We went to the Supreme Court within the stated time, but if this court is not continued, we are afraid that we will find that we have spent that money without result. This situation has arisen because of this condition: That no review can be had of a negative order under the ruling of the Supreme Court in the Procter & Gamble case.

I might point out some other cases by way of illustration that have gone to the Supreme Court of the United States upon affirmative orders where exactly the same questions were determined, but which, if they had arisen under negative orders of the Interstate Commerce Commission, could not have been reviewed.

Take the Eichenberg case. There the Interstate Commerce Commission found that the Southern Pacific Terminal Co. was giving to one Young a preference and advantage at the port of Galveston by leasing to him a certain wharf where his men sacked cotton seed and cottonseed meal. The commission ordered the Southern Pacific Terminal Co. to cease and desist from giving Young that preference and to cease from discriminating in his favor. That case went to the Supreme Court of the United States and the commission was sustained, but if the commission had said to the complainant, "No; this is not an unlawful discrimination; this man Young is entitled to receive this treatment," the complainant could not have gone into any court and had that question determined; yet, because it was an affirmative order and directed against that carrier, the question could be reviewed.

In the Portland Gateway case the commission, by an affirmative order, required the Northern Pacific Railway Co., with its connections, to establish through routes and joint rates for passengers and their baggage from Chicago and eastern points to Seattle via Portland, Oreg. The commission held, as a matter of law, that the fact that passengers desired to use different routes was sufficient to warrant their holding that the route via the Northern Pacific from St. Paul was not a reasonable or satisfactory through route. The commission said that the passenger had the right to select his own route; that his comfort and the new sights to be seen along the route were matters that he could take into consideration in the selection of the route. That holding was then made the subject of an affirmative order and as an affirmative order was appealed, and on that appeal the commission was reversed, because they held that the passenger must be satisfied with the route if it is a good one. Now, that question could not have been determined if the commission had dismissed that case in the first instance.

What is known as the Shreveport case is one to which I shall call your attention. It involves a question as to how far the Federal power can reach out and correct any inequalities arising out of rates made by State authority when compared with interstate rates applying over the same railroad. In that case the vote was four to three in favor of this power. I happened to be counsel for the Louisiana Railroad Commission. That case was decided by a vote of four to three against the Railroad Commission of the State of Texas, but if they had dismissed that suit that question could not have been appealed to any court. The common carriers in that case were ordered to put in effect the same basis of rates east and west in that territory

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as north and south, and the Commerce Court sustained the commission. But if there had been a dismissal, there would have been no determination of that question, which was a question of law, at all.

So the point we make is this: That wherever the commission determines any question of law the Commerce Court should have some jurisdiction to review that decision, and that jurisdiction it does not have, under the ruling in the Procter & Gable case, unless it is an order directing the carrier to do something. In other words, we desire to have the same right to have the commission's mistakes corrected that the carriers now have. I think the language of this bill abundantly protects all the commission's actions upon questions of fact.

Now, there is one other thing I would like to bring to the attention of the committee: Under the Sims bill the common carriers could bring suit in any district court of the United States upon the orders of the commission, and the carriers could combat the same order in the same suit or bring suits in as many courts as had jurisdiction of the carriers, and in that event you would have as many decisions on the same order as there are jurisdictions in this country, provided there were enough defendant railroad companies involved in the order to reach every jurisdiction in the United States. I had the honor for nearly seven years to represent the Interstate Commerce Commission. I remember that the first case in which I was called upon to go into court was a case where the railroad company had filed its suit in San Francisco. This trip required five days; I had the record with me on the train, and all I knew about that case I had to get from the record within that five days, without any opportunity whatever to consult the commission or the member of the commission who wrote the opinion or to prepare a proper defense. Now, gentlemen, such a situation as that can inure only to the benefit of the carrier. The shipper under such conditions would be put at the mercy of the carrier, and we would have to face a long line of diverse decisions by the several district courts throughout the entire United States. Of course the carriers would have every advantage in the matter of expense, because the representatives of the carriers can travel upon passes, and, besides, they have local counsel all over the country prepared to take care of these cases. They know about these cases, and they know just what they are going to do before the suits are filed. So, gentlemen, I give it as the result of my experience as an attorney for the Interstate Commerce Commission, that it would be of the greatest possible assistance to the carriers in their attempt to set aside the work of the commission to confer this jurisdiction upon the district courts of the United States.

I have not heard a single reason advanced for the abolishment of the Commerce Court, except that some of the decisions of the Commerce Court were reversed by the Supreme Court of the United States. That is the only criticism I have ever heard of the Commerce Court, and that extends only to the personnel of the court.

Mr. BROUSSARD. I want to ask you a question merely to bring out this fact: You have just made the statement that the diverse decisions of the district courts and the widely scattered jurisdictions in which suits could be brought would inure to the benefit of the carriers. Of course, the carriers could bring their injunctions against the commission in the district court and could multiply these suits

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in the various courts as many times as there were carriers interested in the decision. Now, under the proper conditions, suits of that character, instead of being submitted to the various district courts would be concentrated in one court; all of them would be fused together and all tried at one time, resulting in a saving of time and money as well as in uniformity of decision.

Mr. WALTER. Yes, sir; and it is brought right at the seat of Government where the libraries and statistics are available, and it would also relieve counsel for the commission and for the Government of the necessity of traveling all over the country to try these cases. With the jurisdiction in the district courts, there must be a multiplicity of counsel, because it is impossible for one man to be in two places a thousand miles apart on the same day. But in all this agitation for a repeal of the law, there was another object in view. It is easy to attack the majority and try to seek some advantage of that sort, but when the responsibility for doing something falls upon any administration there must be a good reason for setting it aside. Let those who urge the abolishment of this court give their reasons for it, and if their reasons are sound, they should have a basis for action; if they are not sound and rest merely upon prejudice or lack of knowledge, they should be disregarded. I have not heard from a single source any valid objection to the creation of a court at Washington whose jurisdiction should be exclusively upon matters of transportation.

I represent interests that are hostile to the trunk lines of the country. The nearest I come to being interested in railroads at all is in these short industrial lines in the Southwest, and their interests are hostile to the trunk lines, because where a shipper on that line had a 19-cent rate from the junction point to St. Louis he must continue to pay the 5-cent rate over the industrial line down to the junction point and then the 19-cent rate to St. Louis in addition, making a 24-cent rate, which the trunk lines are receiving to-day. The trunk lines to-day are keeping in their treasury the industrial lines' part of the joint rate.

I do not care now to argue the questions of law involved in this decision by the commission; I merely point out to you that they are important questions, and I submit that we are entitled to have the decision of a court upon them. We are entitled to have a court pass on these questions just the same as though we were the beneficiaries of some so-called affirmative order. It seems to me to be indefensible that there should be nowhere in this country a court to pass upon the denial of a right to shippers when there is ample jurisdiction to pass upon the rights of carriers.

I might say here that I represent the Yellow Pine Manufacturers' Association, the Railroad Commission of Louisiana, and the Commercial Club of St. Joseph, Mo. I do not recall that I am specifically authorized to speak for any other interests.

Your committee has already gone on record as being in favor of this added jurisdiction to review these mistakes of law. There can be no question as to the soundness of that conclusion. I do not understand that there is anybody opposed to it, not even the commission. They simply insist that any statute enacted shall be such as to afford no loophole by which they may be divested of their power to determine finally questions of fact.

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I think this bill is complete. A question has been directed at the clause on page 10, as follows:

And upon making its determinations or orders shall make and file as part of its report its findings of fact and its conclusions of law.

I think the commission's powers are amply safeguarded. If it is a question of fact or a finding of fact and there is a fact to support it, the Supreme Court has the right to state that the carrier can not ask to have that finding of fact reviewed. I might point out that in numbers of decisions the Supreme Court has held that the commission's finding on questions of fact, if there is any evidence in the record to support it, is not reviewable by the court. All that we ask is that the same yardstick applying to orders against carriers be applied to orders denying relief to shippers. That is our position in the matter.

I think that is all I care to say, unless there are some questions.

Mr. TAGGART. What about the condition of business before the courts on account of cases that would come before the court from the insular possessions? The personnel of the court is not to be increased?

Mr. WALTER. No, sir; I understand not. There will be five judges.

Mr. TAGGART. I have not had time to investigate this matter particularly, but what would be your idea of the number of cases which would come before the court because of that added jurisdiction?

Mr. WALTER. I think the figures will be submitted to this committee to show that members of this court have gone out to the circuit courts and district courts by designation of the Chief Justice of the Supreme Court, and that they have sat in the circuit court of appeals, and have rendered decisions or aided in making decisions of cases in those courts in excess of the number of appeals that will come from these various insular possessions, or that now come from the insular possessions to the Supreme Court. That data can be secured, no doubt, from the Attorney General's office. I am inclined to think that there is ample opportunity to take care of these cases without in any way interfering with cases involving transportation questions.

Mr. BROUSSARD. I can give you some information on that. The number of cases disposed of by the Supreme Court which would have gone to the Commerce Court if this bill had become a law is as follows: October term, 1910, bankruptcy cases, 6; Philippine Island cases, 8; Porto Rico cases, 8; total, 22. For the October term, 1911, bankruptcy cases, 20; Philippine Island cases, 6; Porto Rico cases, 9; total, 35. These would be the three classes of cases that would go to the Commerce Court, and the average for these two years is about 30. The total is 47 cases. The Commerce Court has pending before it now, excluding the cases that have been decided and gone to the Supreme Court and that must come back to the court for final adjudication, 12 cases, I believe. I have the list here. There are 12 cases pending there, and under the present law when the court is without business the Chief Justice of the Supreme Court designates the judges to go out and help in the district courts where the dockets are crowded with business; so that they find time now to go out, and they have decided more cases on these special assignments than would be the total amount of cases that would come to them if this added jurisdiction should be given to the court. So that it would expedite the

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decision of cases from the Philippines, Porto Rico, the Canal Zone, and from the bankruptcy courts, over the present system, and it would not delay the determination of Commerce Court cases proper that are now being considered by that court.

Mr. WALTER. Those Tap Line cases were argued about 10 days ago in the Commerce Court. The Supreme Court decided some cases appealed from the Commerce Court in the last two weeks, and 30 days are allowed for the mandate to come down. There has been no jurisdiction created anywhere to take care of these matters, and on the 1st day of July there will be no money available for that court to work with. While it is not perhaps proper to charge this committee with responsibility for that situation, yet, as Members of the House, you are responsible. There is the situation, and it seems to me that the money should be forthcoming, certainly, to take care of cases now pending in this court and that can be taken nowhere else.

Mr. BROUSSARD. I said something awhile ago about the Interstate Commerce Commission and something about the Attorney General and their position in reference to the proposed abolishment of this court. With the committee's permission I would like to read a letter from the commission and one from the Attorney General in regard to this bill. I do this in order that the position of the commission and of the Attorney General may be properly stated. The letter from the Interstate Commerce Commission reads as follows:

INTERSTATE COMMERCE COMMISSION,
Washington, May 27, 1913.

Hon. R. F. BROUSSARD,
House of Representatives, Washington.

DEAR SIR: The request contained in yours of the 7th for an expression of the views of the commission as to your bill (H. R. 4765), has been considered by the commission, and in reply to same I am directed to say:

The commission has not thought it appropriate to express, as a commission, any opinion as to the advisability of continuing the Commerce Court, it being thought that the commission should not indicate preference as to the court in which its decisions are subject to review.

On the assumption that the purpose of your bill will be carried out and that the Commerce Court will be continued, we have the following criticisms and suggestions as to the text of your bill.

The title of the bill and the enacting clause are not quite in harmony, in that the title declares it to be a bill "to amend and reenact," while the enacting clause provides only for amendment.

Section 2 of your bill, amending section 207, provides that "any rule, decision, or determination" of the commission dismissing any complaint shall be deemed an order. The purpose of this is, of course, to provide court review for negative orders of the commission. In the light of past experiences an amendment for this purpose will undoubtedly be used as the basis of an argument that the Congress intends to give the court a right to substitute its judgment for that of the commission concerning controversies over which the commission has exclusive original jurisdiction, contrary to the present situation, as construed by the Supreme Court. We think, therefore, that the language of such an amendment should be carefully guarded. It is also noted that under subhead "first" of section 2 the court would have jurisdiction of all cases for the enforcement of orders other than for the payment of money, while no such exception appears in subhead "second." It is not apparent why the court should have greater jurisdiction to enjoin than to enforce an order. The commission is therefore of the opinion that if provision is to be made for review of its negative orders the "second" paragraph of section 2 of the bill should read as follows:

"Second. Cases brought to enjoin, set aside, annul, or suspend in whole or in part any order of the Interstate Commerce Commission, including negative orders dismissing complaints filed before the commission, but not including orders for the payment of money: *Provided, however,* That the provisions of this

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paragraph shall not be so construed as to give the court the right to substitute its judgment for the judgment of the commission as to matters which are either administrative or legislative in character."

The "fourth" head, under section 2, refers to mandamus proceedings. It is our understanding that in the absence of special legislation to the contrary the court will issue mandamus to an administrative officer only (1) to compel the performance of a ministerial duty which does not involve the exercise of judgment or discretion, and (2) to compel action where judgment or discretion is involved and the officer refuses to act, but that in neither of these cases will the court undertake to control in any way the exercise of such judgment or discretion. This mandamus power is now lodged in the Supreme Court of the District of Columbia. It would seemingly be entirely consistent if it were transferred to and vested in the Commerce Court, but in order to guard against successful contention that something more than the transfer of the jurisdiction was intended by the Congress we think that the paragraph under the head "fourth" should read as follows:

"Fourth. All such mandamus proceedings as under the provisions of section twenty or section twenty-three of the act entitled 'An act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, as amended, are authorized to be maintained in a circuit court of the United States; and the jurisdiction now possessed by the Supreme Court of the District of Columbia over proceedings in mandamus against the Interstate Commerce Commission is hereby transferred to and vested exclusively in the Commerce Court."

Under section 3 of your bill, amending section 207a, it is proposed to confer upon the court jurisdiction of proceedings brought to enjoin, set aside, annul, or suspend, in whole or in part, any order "or action" of the commission under the valuation act of March 1, 1913. This seems to us to be new legislation and not a transfer of jurisdiction now possessed by the district courts. The words "or action" would afford wide opportunity for contentions concerning the meaning of same, and for that reason the incorporation of those words is deemed objectionable. If the word "action" means the same thing as the word "order," there seems to us no necessity for this new section 207a, for the reason that the valuation act is an amendment to the act to regulate commerce, and it therefore necessarily follows that any order made by the commission under the valuation act would be reviewable under the same jurisdictional provisions that apply to other orders of the commission under the act to regulate commerce. We think it advisable that this section should be eliminated.

Section 8, amending section 208, provides for injunctions or restraining orders, but it does not provide for notice to the commission. We think it important and very desirable that after the word "except," in line 8, page 10 of the bill, there should be inserted the words "upon hearing after five days' notice to the commission and."

Section 9, amending section 208a, seems to contemplate something different in the line of reports than that required by the present law or customary under the present practices. We have had no complaint as to the sufficiency of the reports of the commission. It would be an extremely difficult matter to state all of the commission's decisions "on questions of administrative policy and expediency." The commission's findings of fact when supported by substantial evidence in the record are, under the Supreme Court's decisions, now binding upon the courts and not subject to review. This question of jurisdiction has been fought through the courts now for several years and is, in our judgment, in excellent shape, and new requirements as to the reports of the commission would raise numerous new questions as to the sufficiency of those reports, and no doubt embarrass the administration of the act by much new litigation.

This section also contains a provision that it shall apply to orders and determinations made under the valuation act, and for the reason hereinbefore stated we think that unnecessary.

Section 10, amending section 209, seems to be desirable if provision is to be made that the cases shall be hereafter brought against the commission instead of against the United States, but it is suggested that lines 20 and 21, on page 11 of the bill, be amended to read as follows: "Otherwise a copy of the report and order of the commission which is concerned." The report is the report of the commission and is not always over the name of a particular commissioner.

Section 11, amending section 209a, is, we think, extremely objectionable. It would enable the carrier to place before the courts such portion of the record

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before the commission as it might think favorable to it, and thus enable it to make a prima facie case entitling it to a preliminary injunction. The second sentence would entitle any party to a proceeding in court, or the court itself to make a part of the record in court, a portion of the record before the commission, and the third sentence would compel a party who felt himself so placed in an unfavorable position to supply the remaining portion of the record before the commission or suffer the consequences of a failure so to do.

In our view the record before the commission can not be made evidence in court against the will of any party to the suit in court except for two purposes, (*a*) to show that the commission did not accord a full hearing and (*b*) to show that the commission acted arbitrarily in making the order; that is, acted without substantial evidence. A portion of the record before the commission would not, however, even tend to show that the commission did not accord a full hearing or that it acted without substantial evidence. Therefore a provision which gives a party to a suit in court a right to select from the record before the commission such portion or portions as he thinks favors his contentions and casts upon the commission or on some other party, who is endeavoring to uphold an order of the commission, the burden of meeting the case thus made would seem to relieve those who challenge the validity of the commission's order of the burden of proving that such order is invalid and place upon those who are endeavoring to uphold the order the burden of proving that it is valid. Efforts have been made to introduce parts of the record before the commission in support of allegations in the court and have been successfully resisted in some important cases.

It is not believed that the provision for certiorari is necessary. Any party who wishes to place before the court in a given suit a certified copy of the record before the commission can procure such copy from the commission's secretary by applying therefor and paying the expenses incurred in making it. It seems to us that this is a burden which is rightly placed upon the parties who challenge the validity of the commission's order and that that burden should not be shifted to the shoulders of the commission. We think that section 11 should be omitted.

In section 12, amending section 211, it is provided that cases shall be brought by or against the commission, but no provision is made for the conduct of such cases on behalf of the commission. It is therefore suggested that after the words "against it," in line 24, on page 13 of the bill, the following words be inserted: "and the commission by its own counsel shall have charge of and conduct such cases and proceedings on behalf of the commission at all stages thereof in any court."

Yours truly, E. E. CLARK, *Chairman.*

I will now submit the letter from the Attorney General, which is as follows:

DEPARTMENT OF JUSTICE,
OFFICE OF THE ATTORNEY GENERAL,
Washington, D. C., May 13, 1913.

Hon. ROBERT F. BROUSSARD,
House of Representatives.

DEAR MR. CONGRESSMAN: I have your letter of May 9, accompanied by a copy of your bill H. R. 4765, to amend and reenact certain statutes concerning the Commerce Court.

I have not had time to go critically into this matter, and therefore can not hope to give you much aid in reference to it. The bill was submitted to Mr. Esterline, who has represented the Government for quite awhile before the Commerce Court, and he has made certain suggestions, which you will find upon slips pasted in the margin. These, I think, are worthy of your serious consideration.

The destruction of the court, I am afraid, would give rise to very serious difficulties in enforcing the interstate commerce acts; while its strengthening and upbuilding might make it a very useful instrumentality in carrying them expeditiously into effect.

Regretting that I have not had more leisure to give the subject the earnest consideration which it merits, believe me,

Very truly, yours, J. C. MCREYNOLDS,
Attorney General.

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STATEMENT OF MR. JAMES C. LINCOLN, OF NEW YORK, REPRESENTING THE MERCHANTS' ASSOCIATION OF NEW YORK AND THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE.

Mr. LINCOLN. Mr. Chairman, I appear before the committee as the representative of the Merchants' Association of New York, and have also been delegated to represent the National Industrial Traffic League. We urge the continuation of the Commerce Court, which is a central court to which orders of the Interstate Commerce Commission can be taken on questions of law as to the proper order having been made. I want to say that in my conversations with the shipping interests throughout the country I have been unable to find any opposition to the Commerce Court, and I have undertaken to locate the responsibility for the opposition that seems to prevail in some respects through the press, but I have been unable to do so. Appearing before this committee we ask, first, that the Commerce Court be continued; second, that if any amendment is made to the act—and I speak only of the Commerce Court as applied to the act to regulate commerce and not as to jurisdiction over these other matters that have been mentioned—that is to say, cases from the Philippines, Porto Rico, the Canal Zone, etc., because we are dealing with traffic questions and not with these other questions—we ask that the power of the commission be not limited, and we ask that you give to shippers the right of appeal on questions of law and not on questions of fact. Now, in dealing with the Commerce Court I probably ought to introduce myself to the members of this committee by stating with a little further detail whom I represent.

The National Industrial Traffic League is a traffic organization dealing with traffic matters. It embraces in its membership the traffic representatives of the commercial organizations throughout the country. By way of illustration I will state that the Boston, New York, Philadelphia, Baltimore, and Richmond commercial organizations are members; the Galveston, New Orleans, Houston, and Mobile commercial organizations are members; the San Francisco, Sacramento, Portland, and Seattle commercial organizations are members, and in the Northwest the commercial organizations of Duluth, St. Paul, and Minneapolis are members. In the Middle West the commercial organizations of Chicago, Milwaukee, Omaha, St. Joseph, Kansas City, St. Louis, Louisville, and Cincinnati are members. It represents through its membership over 125 commercial organizations.

The question of a central court for the solution of cases appealed from the decisions of the Interstate Commerce Commission was considered by that organization prior to 1910. That consideration was made necessary by the difficulties that commercial organizations, or the traffic men of commercial organizations representing the shippers, were experiencing. A rate or regulation might be established by a railroad running through the jurisdiction of several of the Federal courts. Application might be made by the shippers, as was done in one Federal district, for injunction, and it would be granted, and in another Federal district the application for injunction would not be granted, and that on the same question.

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I remember particularly the question of milling in transit and the reconsignment of grain. In Arkansas the court granted the injunction, but the court in the Missouri district declined to grant the injunction, although the cases involved the same shippers dealing in the same territory. Take the lumber cases, where in the yellow-pine districts rates were permitted to be advanced, while on the northwest Pacific coast the railroads were not permitted to advance the rates. Take the grain elevator case, a case that I was very familiar with. I won the case before the commission. It went to a Missouri Federal district court, and finally I got a decision from the United States Supreme Court five years after the decision was rendered before the commission. I might say that I do not think it has been finally determined yet in all of its details. That was prior to the establishment of the Commerce Court. Representing the National Industrial Traffic League—I was at that time the president of the league—I appeared before the House and Senate committees in support of the Commerce Court. The National Industrial Traffic League, when the question of the abolishment of the Commerce Court came up for consideration again, had that question considered by its legislative committee, drawn from several different communities, then by the executive committee, and on May 23 by the league as a whole. As representing the views of the shippers throughout the country, in all lines of business relating to transportation, they are absolutely, all of them, in favor of the continuance of the Commerce Court.

Now, as to the provisions contained in Mr. Broussard's bill, H. R. 5902, in section 7, in regard to the negative orders of the commission, I can say, as chairman of the legislative committee, that the shippers are in favor of a provision of that character. The committee has felt that previous provisions in bills in regard to the right of shippers to appeal from negative orders of the commission possibly went too far, in that it might give the Commerce Court power to review findings of fact and not those of law alone.

I am satisfied from my examination of the bill that that feature has been overcome in the redrafting of the bill. The legislative committee at least thinks so, because it has been submitted to them and they approve it. We do wish to urge—because we have cases that will have to come before the court on appeal—that provision be made for the continuance of the Commerce Court, first, not that we desire any legislation that would interfere with the operations of the Interstate Commerce Commission in any respect, because that body is recognized as a business body in the administration of commerce matters so far as the public generally is concerned, but because the great shipping interests of the country need this tribunal.

Mr. FITZHENRY. Whom do you represent in this matter?

Mr. LINCOLN. I represent directly the Merchants' Association of New York, being the manager of its traffic bureau. I am also delegated to represent the National Industrial Traffic League, an organization of shippers, and I will say for the information of the committee that it represents an organization of shippers' organizations and commercial bodies, like the Merchants' Association of St. Louis, the Merchants' Association of New York, the Boston Chamber of Commerce, the Merchants' and Manufacturers' Association of Baltimore, the Merchants' Association of Kansas City, the Merchants'

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Association of Omaha, and the Merchants' Association of Denver. I can file with the committee a list of the membership if desired.

Mr. FITZHENRY. The ones mentioned last, are they interested in traffic matters or are they simply organizations of business men?

Mr. LINCOLN. They are all interested in traffic matters.

Mr. FITZHENRY. You do not get my point. Are they traffic organizations or organizations of business men generally for the development of the communities in which located?

Mr. LINCOLN. They are organizations of business men for the development of the communities in which located, included in which is the question of transportation and traffic matters.

Mr. FITZHENRY. Do they look at these matters as between shippers and carriers?

Mr. LINCOLN. Yes, sir. I think it might be desirable to file a glossary of the membership.

The CHAIRMAN. Very well.

STATEMENT OF MR. WINFRED T. DENISON, ASSISTANT ATTORNEY GENERAL.

Mr. DENISON. Mr. Chairman and gentlemen of the committee, I am one of the Assistant Attorneys General, and I have had charge for something over a year of the Government cases in the Commerce Court, representing the Government in those cases. The Attorney General instructed me to give the committee the benefit of my own personal experience in the court, if the committee desired, but he has not determined the policy of the department on this subject, not having had time to consider it with any great care.

The CHAIRMAN. That is to say, the Attorney General has not formulated or expressed any opinion as to the advisability of the retention or the abolition of the Commerce Court?

Mr. DENISON. No, sir; he has not.

One of the great features of the Broussard bill is the relief of the Supreme Court, which has seemed to me of great importance. The court this year, by sitting much longer than usual, and by very, very great labor, disposed of 573 cases, but even at that rate it had to pass over until the next term 607 cases, and it is under great pressure constantly to keep up with its work. It sees no hope of getting its head above water.

The cases which are covered by the Broussard bill and which would be transferred to the Commerce Court (with in all cases a power in the Supreme Court to grant certiorari) would aggregate about 45 cases a year, which is one-twelfth of the work of the Supreme Court in each year, and would be a very substantial relief to them. If some method were deemed proper and advisable by which the Supreme Court could be relieved of the appeals from the Court of Claims also, which is not in the Broussard bill, there would be an additional saving of about 25 to 30 cases a year.

As to the Commerce Court itself, so far as I am concerned, from the point of view of the Government's handling of the cases there, I am quite satisfied with the present situation. It is true, of course, that the Government, as litigant, did not acquiesce in some of the decisions of the court, but the lines have been now very clearly laid

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down by the Supreme Court. The Government and the commission, I think, were not very well satisfied with the circuit court's decisions under the old arrangement, and, in point of fact, the Commerce Court has upheld the commission in a larger percentage of cases than the old circuit courts did, and even in a larger percentage of cases than the Supreme Court.

The CHAIRMAN. Have you any figures on that?

Mr. DENISON. Yes, sir.

The CHAIRMAN. I would be glad to get them, because I heard a gentleman the other day very much in favor of the abolition of the Commerce Court attempt to give some figures in that regard that seemed to indicate somewhat to the contrary. I would like to have them as fully and in as much detail as you can give them.

Mr. DENISON. I have right here the percentages figured exactly. I will submit a list of the specific cases, if you desire.

The CHAIRMAN. The committee will be glad to have them.

Mr. DENISON. Here are two memoranda which cover it:

Memorandum I.—The commission and the courts under the old plan.

All suits finally decided in the circuit courts and on appeal from them to Supreme Court after the Hepburn Act of 1906. This does not include the 31 cases which were abandoned or transferred from the circuit court to the Commerce Court.]

Petitioner's name.	Commission upheld or reversed.	
	Circuit court.	Supreme Court.
I. C. C. v. Harriman	Upheld	Reversed.
Chicago & Alton R. Co	Reversed in part	Upheld.
Ill. Central R. Co		
So. Pac. Co	Upheld	Reversed.
N. Y. C. & H. R. R. Co	do	
N. Y. C. & H. R. R. Co	do	
D., L. & W. R. R	Reversed	Do.
So. Pac. Terminal Co	Upheld	Upheld.
D., L. & W. R. Co	Reversed	Do.
N. P. R. Co	do	Do.
U. P. R. Co		
G. N. R. Co		
C., R. I. & P. R. Co	do	Do.
Peavey & Co	do	Reversed.
Diffenbaugh		
C., M. & St. P. R. R. Co	Upheld	
C., B. & Q. R. Co	Reversed	Upheld.
N. Pac. R. Co	do	Reversed.
Pa. & R. R. Co	Upheld	
O. & C. B. St. Ry. Co	Reversed	
Humbolt Steamship Co. (Ct. App. D. C.)	do	Do.

Memorandum II.—The commission and the courts under the Commerce Court plan.

[Commerce Court decisions from its institution to June 16, 1913.]

Petitioner.	Commission upheld or reversed by Commerce Court.	Commission upheld or reversed by Supreme Court.
1 & 2. So. Pac. & A. T. & S. F	Reversed	
4. L. & N	do	Upheld.
5, 6. Hooker, Eagle Co	Upheld	Held Commerce Court no jurisdiction.
7. A. T. & S. F	Reversed	
9. Procter & Gamble	Upheld	Do.
15. U. S. v. Union Stock Yards	Reversed in part; upheld in part.	Upheld.
21-24. Goodrich Transit Co., etc	Reversed	Do.

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Memorandum II.—The commission and the courts under the Commerce Court plan—Continued.

Petitioner.	Commission upheld or reversed by Commerce Court.	Commission upheld or reversed by Supreme Court.
25. Omaha & Council Bluffs L. Ry	Upheld	Reversed.
31. Penn. R. R	do	
36. A. T. & S. F	do	
38. B. & O. Lighterage	Reversed	
39. B. & O. coal rate	do	Upheld.
40. Norfolk & Western R. Co. *v.* U. S	Upheld	
41. Preceding case	do	
42. Arkansas Fertilizer case	do	
47. Nashville Reshipping case	Reversed	
50-51. Intermountain cases	do	
54. Anaconda Copper Co. *v.* U. S	Upheld	
55. Crane Iron Works *v.* U. S	do	
56. Kansas City So. R. Co. *v.* U. S	do	
57. U. S. *v.* L. & N. R. Co	Commission gets mandamus it asked.	
58. Florida East Coast R. Co. *v.* U. S	Upheld	
59. Second Willamette Valley case	do	
60. B. & O. S. W. R. Co. *v.* U. S	Reversed	Reversed.
61. Lemon Rate case	Upheld	
65. Chamber of Commerce of Augusta *v.* U. S	do	
66. International Salt Co. *v.* U. S	do	
67, 68. Shreveport case	do	
70. Lehigh Valley R. Co. *v.* U. S	do	
71, 72, 73. First Tap Line cases	do	
75-80. Pipe Line cases	Reversed	
82. Newport News case	Upheld	

Mr. DENISON. The commission was upheld by the circuit courts under the old plan in cases arising since the Hepburn Act in only 42 per cent of its cases. It has been upheld by the Supreme Court in 56 per cent.

The CHAIRMAN. The Commerce Court has?

Mr. DENISON. No; the commission. The orders of the commission were upheld by the circuit courts in only 42 per cent of the cases, by the Supreme Court in 56 per cent, and by the Commerce Court in 67 per cent.

In these figures concerning the experience of the commission with the circuit courts under the old plan, I have taken above only the cases arising since the Hepburn Act of 1906.

Prior to that act, and under the act of 1887, however, the commission lost pretty nearly all of its cases. The history is given in the pamphlet issued from the index office of the commission in 1911. It shows, for instance, that in the first 17 of its cases it lost in the lower courts 11, and all but 1 of those which it did win were reversed by the Supreme Court.

But any way, all that is a matter of personnel and a matter of the difficulty of working out legal principles in a new field. The Supreme Court has now laid down very clearly the general controlling principles, so that I should expect that there would be no further public criticism of the decisions of the Commerce Court. Incidentally you probably understand that the Commerce Court is not a fixed body as to its tenure under the law as it stands now and under the Broussard bill.

The CHAIRMAN. The judges constantly change?

Mr. DENISON. They change.

The CHAIRMAN. Circuit judges are designated for that court, and they change?

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Mr. DENISON. Yes, sir. After 1916 a judge can not be redesignated to fill a vacancy caused by the expiration of his own designation, and so there will have to be a new judge brought in each year.

The CHAIRMAN. Does the Broussard bill change that condition at all?

Mr. DENISON. I think it changes the date beyond which a redesignation can not be made. For some reason, I do not know just what, under the law as it now stands the date after which a redesignation can be made of the same judge is 1914. Mr. Broussard's bill changes that to 1916.

The CHAIRMAN. But the same plan of change is adhered to?

Mr. DENISON. Yes, sir; exactly the same plan with that one difference.

The thing, from the point of view of the conduct of the Government's business, which strikes me most forcibly is the difficulty of any other plan than the handling of these cases in a central court and in an unprejudiced community like Washington, because the questions are not questions between individuals, but are questions between sections of the country. Consider the Intermountain case, which involved rival interests of great sections of the country all the way from the Pacific coast to the Atlantic coast——

The CHAIRMAN. I am not asking you to speak for the Attorney General as to his views of the wisdom or unwisdom of the retention or abolition of the Commerce Court, but the committee would like to have your own personal view in line with what you have been saying.

Mr. DENISON. It seems to me that inasmuch as the questions which are up for litigation in these cases are questions which are necessarily national and involve conflicts between different sections of the country that it would be very inadvisable to have those questions distributed out to the local courts in the particular rival districts. Furthermore, to take the Intermountain case—under the Sims bill, as I understand it, the railroads could have tested the validity of the Intermountain order in substantially every district court of the United States. They could take their pick of whatever district they preferred or they could test it by different cases in every district.

The CHAIRMAN. If the Commerce Court were abolished, could the railroads that were dissatisfied with the decision of the court in one locality take it to another court for decision again?

Mr. DENISON. I can not understand what would prevent their doing it, because all these cases involve a number of railroads, and all that is necessary is for them to have one railroad sue in one district, another railroad in another district, and another railroad in another district. In the Intermountain case I think there were 20 railroads, and every one of them could sue under the Sims bill, as I understand it, in a different district, and the Government and the commission would have to defend the cases in all those districts. There would be a great danger of diversity of decisions, as well as great inconvenience.

Mr. TAGGART. You give original jurisdiction to the Interstate Commerce Commission sitting in Washington?

Mr. DENISON. Yes, sir.

Mr. TAGGART. And a review of those cases, regardless of whether there was a denial of the petition or——

Mr. DENISON (interposing). On questions of law.

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Mr. TAGGART. But questions of fact would be final as determined by the commission where supported by any reasonable degree of evidence, although it might be that it was not supported by any act?

Mr. DENISON. Yes, sir.

Mr. TAGGART. That is the situation now?

Mr. DENISON. Yes, sir.

Mr. McCOY. But does not such a contention raise a question of law?

Mr. DENISON. Yes, sir; that is the present rule of the Supreme Court.

Take a case like the California Lemon Rate case—a case involving the rates on lemons from California to the points in the United States and Canada east of the Rocky Mountains. Under the Sims bill, as I understand it, those rates could be tested in any district in which any part of the traffic either originates or has its destination, namely, substantially any district from California to New York; they can put that case in any one of those or have different railroads put the cases in all of them.

Mr. McCOY. As an original case?

Mr. DENISON. Yes, sir; that is the way it looks to me under the Sims bill. I do not think it is a practical thing to handle the litigation in that way.

Mr. McCOY. I thought you meant under the present situation?

Mr. DENISON. No; under the proposed substitute for the Commerce Court.

The CHAIRMAN. The Sims bill is not a substitute for the Commerce Court; it abolishes the Commerce Court?

Mr. DENISON. Yes; and provides that the district courts shall have that jurisdiction—a substitute arrangement for handling the litigation.

Another class of these questions is composed of cases like the Nashville discrimination case, involving an alleged discrimination in favor of Nashville, Tenn., as against Atlanta, Ga. Under the Sims bill, as I read it, the railroads could test the validity of their alleged discrimination in favor of Nashville in the district court at Nashville if they saw fit; a question which is a white-hot question in that locality, and the district judge would be in a most embarrassing position. Being a local man, with his own people vitally interested in that question, he has either to lean over backwards or be subject to a query.

The identical reasons which make it important that the Interstate Commerce Commission itself should be a national body, and that the Supreme Court should be a national body, seem to me to make it important that the Commerce Court should be a national body, because all it does is to take questions from the commission and transmit them to the Supreme Court. On their way from the commission—a body having jurisdiction over the whole United States—to the Supreme Court—which also has jurisdiction over the whole United States—it seems to me expensive and inefficient and illogical to scatter these cases in their intermediate stage all over the country into courts with only narrow district jurisdiction.

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Mr. McCoy. In this Nashville case that you speak of, after the Interstate Commerce Commission has decided, who would test the decision in the court at Nashville—one of the shippers?

Mr. Denison. No; the railroads.

Mr. McCoy. Under the Sims bill, if it should become a law?

Mr. Denison. The railroads, because the order is against the railroads to compel them to eliminate a discrimination in favor of Nashville as against Atlanta.

Mr. McCoy. How many railroads are there in that case?

Mr. Denison. Two railroads.

Mr. McCoy. If the decision should be in favor of the railroads and against the Atlanta shippers, would there be any possibility of the shippers in Atlanta retesting the question in the court at Atlanta, or is that in the same district?

Mr. Denison. It is a different district. You see, they could not retest it there. All they could do would be to appeal to the Supreme Court, because there has been no order of the commission against them.

Take the Shreveport case. There the question is really a battle between Texas and Louisiana. Why is it not more desirable that such a question should be tried by a central court sitting in Washington than by a court in either Louisiana or Texas?

Take the questions that are going to arise under the railroad physical valuation act and think of the enormous labor and inconvenience that will be necessary to try out those questions if litigated throughout all the district courts of the United States and to educate all the judges of the United States on this subject.

As a practical matter, it does seem to me that there are enormous difficulties in handling the situation in any other way than by a single central court right here. It has been pointed out how necessary it will be for the counsel on behalf of the Government and the commission to be increased in number so that they can be at hand to travel wherever the cases call them to go. It is impossible to estimate how many there will have to be.

The Oil Pipe Line cases are another group of cases. In those cases the order was against 13 different pipe lines, and every one of those could, if the Sims bill had been law, have tested the question in different districts, and no one knows how long a time it would have taken and how much inconvenience it would have caused to defend all that litigation scattered all over the country. Under the present plan it was very simple, as they were all brought in the Commerce Court and consolidated and handled together and very quickly disposed of.

In reference to a question which was asked, whether the Commerce Court would be able to handle the proposed additional litigation, I do not think there is any difficulty about that. The business on interstate commerce matters has not been enough to occupy anywhere near all the time of the Commerce Court, and the judges have gone out on circuit a very large proportion of their time—perhaps the larger part of their time. They have been very helpful in that way. That has been one of the good features of the present law. It provides a flexible means of relieving congestion wherever it may happen to be at the moment.

The Chairman. Have you had any occasion to look into the matter of how many cases will probably come from the Canal Zone, how

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many cases from Porto Rico, how many cases from the Philippines, and how many bankruptcy cases?

Mr. DENISON. The total of those under the Broussard bill, as it now stands, will be about 45 cases a year on the basis of the prior experience.

Mr. BROUSSARD. It might be more when the Government is established on the Canal Zone?

Mr. DENISON. Yes, sir. You can not estimate exactly, but on the basis of the last two years, for all the classes of cases which it is proposed to transfer, the number of cases would be about 45 to go to the Commerce Court, of which the Supreme Court would be relieved.

The CHAIRMAN. What is the nature of those 45 cases?

Mr. DENISON. All kinds of cases that arise in the islands, and the bankruptcy cases.

The CHAIRMAN. From Porto Rico?

Mr. DENISON. Yes, sir; and the Philippines.

The CHAIRMAN. Does that include the bankruptcy cases?

Mr. DENISON. Yes, sir; I include the bankruptcy cases in those figures.

The CHAIRMAN. You do not review cases from the Canal Zone?

Mr. DENISON. There have not been any yet.

Mr. BROUSSARD. Not any yet; but there will be a great many when the government is established.

Mr. DENISON. It might also be of interest to the committee, incidentally, to know that under the Hepburn law the circuit courts were reversed by the Supreme Court in 7 out of 12 cases, and the Commerce Court has been reversed in 5 out of 7 cases, with 1 case part reversal and part affirmance, and 13 appeals still pending. At the hands of the Supreme Court the Commerce Court has fared substantially as well as the old circuit courts did on these questions.

Mr. FITZHENRY. What proportion of the cases are bankruptcy cases?

Mr. DENISON. About one-half of them.

I might file for the information of the committee a list of the persons from whom there are letters on file in the Attorney General's office protesting against the discontinuance of the Commerce Court. We have no knowledge of any on the other side.

The CHAIRMAN. Certainly.

(The list referred to by Mr. Denison follows:)

MAY 29, 1913.

Re Commerce Court.

LIST OF PERSONS WHO HAVE WRITTEN TO THE PRESIDENT OR TO THE ATTORNEY GENERAL PROTESTING AGAINST THE DISCONTINUANCE OF THE COMMERCE COURT.

William A. Glasgow, of Philadelphia.
Wylie M. Barrow, assistant attorney general of Louisiana, special counsel of the Railroad Commission of Louisiana.
Charles A. Bland, traffic manager Georgia-Florida Sawmill Association.
Henry S. Drinker, president of Lehigh University.
Goemann Grain Co., Toledo, Ohio.
Weston Paper & Manufacturing Co., Dayton, Ohio.
The Bettendorf Co., Davenport, Iowa.
Southwestern Interstate Coal Operators' Association, Kansas City, Mo.
T. A. Gantt, T. M. Corn Products Refining Co., New York City.
Central Coal & Coke Co., Kansas City, Mo.
Ohio Shippers' Association, Columbus, Ohio.
The U. N. Roberts Co., Davenport, Iowa.

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Goodrich Bros. Hay & Grain Co., Winchester, Ind.
The Colin Gardiner Paper Co., Middletown, Ohio.
Staver Carriage Co., Auburn Park, Ill.
John H. Gildea, jr., Baltimore, Md.
The Commercial Club, Kansas City, Mo.
Chicago Lumber & Coal Co., St. Louis, Mo.
Frost-Johnson Lumber Co., St. Louis, Mo.
W. A. Mears, manager transportation bureau, New Seattle Chamber of Commerce, Seattle, Wash.
Williams, White & Co., Moline, Ill.
The Estate Stove Co., Hamilton, Ohio.
C. S. Bather, traffic manager Rockford Manufacturers & Shippers' Association, Rockford, Ill.
John L. Messmore, President St. Louis Merchants' Exchange, St. Louis, Mo.
William A. Wimbish, attorney, Atlanta, Ga.
National Industrial Traffic League, 5 North La Salle Street, Chicago.
Citrus Protective League, Los Angeles, Cal.
The Traffic Club of New York, 291 Broadway, New York.
J. L. Graham, vice president Winston-Salem Board of Trade, Winston-Salem, N. C.
Luther M. Walter, attorney, Chicago, Ill.
W. T. Ferguson Lumber Co., St. Louis, Mo.
George Hutchinson, Boston, Mass.
Packard Motor Car Co., Detroit, Mich.
Thomas C. Whitmarsh, president Lumbermen's Club, St. Louis, Mo.
R. A. Long, president the Long-Bell Lumber Co.
W. R. Thurmond, attorney, Kansas City, Mo.
A. C. Burnham, general secretary the National Business League of America, Chicago, Ill.

Mr. BROUSSARD. Do you think that it would be advisable to include in this bill cases on appeal from the Court of Claims, and what effect upon the docket of the Supreme Court would that have?

Mr. DENISON. There are about 30 cases a year from the Court of Claims in the Supreme Court. A considerable number of them are mere questions of pay of Army officers and things like that, which are not of a character which should command the attention of the Supreme Court. I have not talked with my colleague, Assistant Attorney General Thompson, who has charge of that jurisdiction, and I hesitate to express an opinion. I should think that some method might be devised by which the Supreme Court could be relieved of that litigation, while still having the power of certiorari.

The CHAIRMAN. The questions sometimes involved in some of those cases are questions not so much of law, but questions which belong to an auditor or an auditing board?

Mr. DENISON. Yes, sir.

Mr. MCCOY. Does the Supreme Court review the facts?

Mr. DENISON. No; the Supreme Court takes the facts as found.

In conclusion, perhaps I should point out that under the Sims bill the cases will not go to the district judge of the district, but to a court assembled by him, consisting of himself and two other judges, and every time a case is filed the district judge must get two other judges with him before he can act. That seems to be a cumbersome and difficult method. It is really constituting a lot of special local commerce courts and whenever a case comes up there must be a special commerce court constituted in the locality in which the suit is brought.

Mr. FLOYD. Consisting of three members?

Mr. DENISON. Yes, sir. It is much more convenient to have such a court available right here all the time.

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Mr. DAISH. The citation requested for the information of the committee is the Procter & Gamble Co. *v.* The United States of America, and others (225 U. S., p. 282).

Following it is an opinion in Hooker *v.* Knapp and others, which was filed first in the United States Circuit Court and then came up through the Commerce Court to the Supreme Court. Both of them are to the same point.

STATEMENT OF MR. BLACKBURN ESTERLINE, SPECIAL ASSISTANT TO THE ATTORNEY GENERAL.

Mr. ESTERLINE. Mr. Chairman and gentlemen of the committee, I am associated with Mr. Assistant Attorney General Denison in the defense of the orders of the Interstate Commerce Commission before the Commerce Court and the Supreme Court. We are also associated as representatives of the Attorney General in the commencement of suits by the Attorney General before the Commerce Court to compel carriers to obey the provisions of the statute. I appear here, of course, to give my personal views for the use and aid of the committee, and what I have to say is based on my experience as a representative of the Attorney General before the Commerce Court from the day it was organized to the present. I shall give my views in the order in which they occur to me as we proceed.

First. No order of the Interstate Commerce Commission may remain in force and effect for more than two years. That is a very short time. After the order is entered time is of the utmost importance, and expedition supersedes all other things. If that order is within the power of the commission, the shippers ought at once to have the advantages of its benefits; on the other hand, if that order is beyond the power of the commission, then the carriers ought not to be compelled to obey it. On the one hand, the shippers should know what rates they have to pay, so that their business interests may be adjusted; on the other hand, the carriers should know what rates they are entitled to collect, so that their earnings may be definite.

In two of the greatest rate cases of recent years, Interstate Commerce Commission *v.* Chicago, Rock Island & Pacific Railway Co. (218 U. S., 88) and Interstate Commerce Commission *v.* Union Pacific Railroad Co. (222 U. S., 541), the orders of the commission were suspended by the circuit courts, and when the Supreme Court of the United States reversed the judgments on final hearing both orders had expired. While the commission won those cases as a matter of form the railroads collected every dollar of the old rate, which the commission had condemned, and the victory to the shippers was an empty shell. The shippers found themselves with an enormous outlay of counsel fees and court costs as a result of victories which they had won in form, but which the railroads won in fact. Under the old plan, the issuance of the preliminary injunction wins the case for the railroads, even though the judgment is reversed on final hearing. Unless there is a special court to review these cases, the judicial review is hopelessly ineffective with such short-lived orders. Under the old system, in the instances of which I spoke, the average time of litigating a case was over 21 months, while under the present system of the Commerce Court it is but 9 months.

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When the Commerce Court suspended the orders in the Intermountain rate cases, they were expedited so rapidly that within 76 days from the time the order was entered the Attorney General was making his argument before the Supreme Court in the final hearings. This period of 9 months may be even further shortened when the machinery is running as it is now.

Second. The United States is divided into nine separate judicial circuits, each of which has its own districts and judges, and each of which has its own system of practice and procedure. The questions with which the Commerce Court has to deal are nation wide. When a case arises in California, the force and effect of the decision may be felt in New York and Chicago, as the freight may originate at those points destined to California. It is important that the interests of New York and Chicago should be consulted and heard in that litigation.

In the practice before the Interstate Commerce Commission, that body being national in its scope, there is no such thing as an interested party not being heard; they all intervene; they all have their hearings. It is not within the power of any person or community to get an advantage over another person or community. When the order of the commission is finally entered, every interest and every locality has had its hearing. Under the old circuit court plan that was not the rule. A case was commenced away off in Oregon before two or three district or circuit judges, and was determined as a case affecting the local interest of that particular locality; the interests of New York and Chicago were not considered as any part of it. Under the present system with the Commerce Court all interests intervene and participate. In the Intermountain rate cases there are three or four interveners; a case rarely comes up that certain interested parties do not intervene; and they are parties to the case and follow it to its final judgment in the Supreme Court of the United States. Under the system and practice of the Commerce Court in these cases there is no such thing as an interest not being heard.

Third. The force and effect of an injunction under the old circuit-court system was limited to a single judicial circuit. It had no extraterritorial effect whatever. The orders of the commission in the Intermountain Rate cases affect traffic moving from the Atlantic seaboard to the intermountain country and the Pacific Ocean. The contests arose between the transcontinental railroad lines and the water lines operating around the Straits of Magellan and the same water lines operating in conjunction with the Panama Railroad across the Isthmus. An injunction issued by some particular circuit court would only mix up things. The whole case and all interests have got to move at one and the same time. The carriers might have filed a bill in the intermountain country—Spokane, for instance—and conducted part of the proceedings there. Down in the California district another series of cases might have broken out, and that court would say: "We do not care what that court up there at Spokane holds, we will run this litigation." Over at Chicago, or some other place, another series of cases might have broken out, and some other court would say that its conscience directs it to hold still another way. It was a discouraging situation. Under the present system when the Commerce Court speaks with all interests represented the whole situation is handled at one order and at one time, and the whole

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case moves forward at one time. The difficulties and embarrassments which resulted from the old system have entirely disappeared.

Fourth. If there is any one argument stronger than another in favor of the special court it is the few cases that are now brought. Soon after the special court was organized the railroads brought a great number of cases. They were quickly put on hearing and disposed of. The results have been so disappointing that the railroads file few cases now. An adverse decision always puts them that much further beyond any successful attempt to assail the validity of these orders. Railroad attorneys and officials have become reconciled to the fact that the Commerce Court is well posted on the statutes, the decisions, and the transportation conditions of the country. The instant they come forward with a case against an order of the commission the court already has in its mind the statutes, the decisions, and the reports of the commission; the railroad counsel are not allowed to spend three or four days arguing back and forth about matters which the judges already have in their minds. The railroads have been practically driven from the court unless they come armed with a strong case. They have many cases to commence, and are holding back, as they have no chance with the special court.

If Congress abolishes the Commerce Court, its action will give the railroads an opportunity to go anywhere in the country and select the forum. They will select two or three railroads and go to one forum and try it out there. If they succeed, well and good. If they fail, then they will try two or three more in some other forum, for it is within their power to go to some other place. With the special court disposed of, it is within their power to carry on their litigation in that way.

Fifth. The United States circuit judges brought to the Commerce Court quickly acquire a familiarity with the statutes and decisions. They hear them cited by the representatives of the railroads, the representatives of the commission, and the representatives of the Attorney General. A lawyer can state his case right into the decisions which are already in the minds of the judges. After a case is submitted the judges of the special court are able to reach judgments in conference, to write their opinions, and to issue orders much more expeditiously than is possible for any other body of men anywhere.

It is sometimes said that the judges of the special court become too specialized; that they consider these cases with narrow minds and become warped in their judgments. Under the system by which the Commerce Court judges have discharged their duties such criticism is wholly out of the question. One member of the Commerce Court has sat in the arguments and participated in the decisions of 145 cases in the United States Circuit Court of Appeals for the Eighth Circuit within the past year and a half. He has written the opinions in approximately 48 of the 145 cases.

The CHAIRMAN. Which judge is that?

Mr. ESTERLINE. Judge Carland. Another member of that court heard the cases of the United States circuit and district courts in Montana in December and January, 1912, and the United States District Court for Arizona in April, 1912.

The CHAIRMAN. That is Judge Hunt?

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Mr. ESTERLINE. Yes; disposing of approximately 60 cases, civil and criminal. The same judge that I have just referred to sat in the United States Circuit Court of Appeals for the Ninth Circuit during May, 1912, and May, 1913. The term there is in May. He went out in May, 1912, and in May, 1913, and heard and participated in the decision of approximately 47 cases, writing the opinions in 15. During all of November and December, 1912, February, 1913, and part of January, 1913, the same judge held the United States District Court for the Southern District of New York, hearing civil and criminal cases. A third member, Judge Mack, sat with the United States circuit court of appeals in Chicago in 1912; he also held the United States District Court for Arizona during May and June, 1912, and the United States district court in New York during December, 1912, January, February, April, and May, 1913, hearing cases, civil and criminal. He is over there now hearing civil and criminal cases, and if there should be an application to the Commerce Court to-morrow for an injunction against an order of the commission he would come here for the hearing. He would suspend the hearing of cases there and come here at any time and sit in the Commerce Court in case of an application for an injunction or in any case in which he is needed. The fourth member of the court, Judge Knapp, the presiding judge, sat in the circuit court of appeals at Richmond for part of the month of May, 1913, hearing their calendar. It was not a large calendar—12 or 15 cases. I do not know how many of the cases he will write, but I know he was there. And, as we all know, he has rendered valuable services to the public in the capacity of mediator under the Erdman Act. While I do not care to make any comparisons, it is my judgment that the members of that court have done as much work as the average judges of the United States circuit courts throughout the country. So that the argument that these judges, in holding this special court for commerce cases, become afflicted with a kind of "mental strabismus" can not prevail.

Mr. TAGGART. The idea would be that under this act they would not go out and do any of that work at all, but would give their time exclusively to the business here.

Mr. ESTERLINE. As I have not closely examined the provisions of the bill, I do not know what it provides about that. There would be plenty of these cases which would come from the Philippines. There are all kinds of cases which would come from these insular possessions affecting property rights, etc.

Mr. TAGGART. A member of the Commerce Court has jurisdiction to go to his own circuit and try any kind of a case?

Mr. BROUSSARD. They have now.

Mr. ESTERLINE. To any circuit to which they may be assigned by the Chief Justice of the United States.

Mr. TAGGART. And to try any kind of a case?

Mr. ESTERLINE. Yes; within the jurisdiction of the Circuit Court. In New York they have a congested calendar; there they are overwhelmed with business. In Montana they did not have a judge for some time, and Judge Hunt went there and held the court. I think they now have a judge. In Arizona the office was also vacant for quite a while, and they went there and held the court. They have all been busy. There has not been any time lost.

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Sixth. Within the past two weeks the Supreme Court of the United States announced opinions and judgments in a vast number of interstate-commerce cases. To anybody who is interested in that subject it was simply marvelous to sit there and hear the judgments coming down from that court. Every justice who spoke on the subject, I think without exception, in delivering his oral opinion, referred to the complex nature of these cases, the far-reaching consequences of the decisions, the importance to the public of the questions decided, and the tendency day after day to increasing complexities and difficulties.

In the short time in which the special court has been in existence I think it is pretty generally agreed among all parties that the present machinery, consisting of the Interstate Commerce Commission, the Commerce Court, and the Supreme Court, for the construction and enforcement of acts to regulate commerce was never in the history of this country so effective as it is now. In enacting these laws we have one Congress, and in construing these laws we have one Interstate Commerce Commission and one Supreme Court. The relation that the courts of original jurisdiction have to these orders is of the highest importance, because a preliminary injunction in a district court wins the case for the railroad. I repeat that under the old system the very instant that a preliminary injunction issued the railroad had won its case. By centralizing this jurisdiction in a court of trained minds we can build up the integrity of the whole system with the Congress, the commission, the Commerce Court, and the Supreme Court all working together, whereas if this original jurisdiction over these orders is scattered throughout all the districts it weakens and destroys.

Seventh, and the last that I have, is that under the old system it frequently occurred that a number of suits were commenced over the same subject matter by different carriers in different jurisdictions widely apart. Each was heard separately and independently of the others. Under the present system a series of similar cases, brought by different carriers, are consolidated and heard as one and disposed of as such. We have now in the Commerce Court the so-called Tap Line cases, to which Representative Broussard and Mr. Walter have referred. I think there are four. They all grow out of one order of the Interstate Commerce Commission. There are four separate and distinct litigants and four separate and distinct cases brought. They all come from the South. The court will say, "How many counsel are here in these four cases?" "Well," counsel for the petitioners will say, "I am counsel in all of them." The court will say, "Well, we will hear them together and will give you so much time." And then the court will ask the other side how much time it desires, and in that way the cases are heard together and are very much expedited. Another illustration is the Water Line cases. The Interstate Commerce Commission, after a long investigation, entered an elaborate order against the water line companies of the country, directing them to report to the commission the accounts of their entire business, intrastate as well as interstate.

A carrier out in Chicago filed a bill before the circuit court alleging "I do not have to report my intrastate business to the Interstate Commerce Commission." The circuit court suspended the order, and then the question at once arose whether the order was suspended as to that carrier only or as to all the 150 water carriers in the United

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States. The Interstate Commerce Commission took a broad view of it and said, "Inasmuch as the circuit court has suspended this order and confusion and chaos will result, we will postpone the effective date of the order against the other carriers until we find out about the matter." The other carriers did not know what they were about or where they stood. The Interstate Commerce Commission might very well have enforced it against them. The order of the circuit court was reversed, but as a result of the confusion and chaos the 150 water carriers kept those accounts from the commission for nearly two years. So also with the six Pipe Line cases. Under the old system litigation could have been brought in six separate circuits by six separate companies over the same order. There could have been one suit in each of the States of Kansas, Louisiana, Ohio, Pennsylvania, New York, and New Jersey. They were all heard together by the Commerce Court as one case; a similar order was entered in each case, with a single appeal. The cases are all advanced together in the Supreme Court, to be heard as one on October 13, 1913.

One other single observation: It was also true that whenever carriers desired to take any action before the circuit court in any of their respective cases, the counsel defending were obliged to travel a great distance in order to participate in the litigation. Under the present system carriers must come to the counsel defending those orders. The practice has been turned end for end. Control of the litigation is taken out of the hands of the counsel for the railroads and put in the hands of the Attorney General. In other words, instead of the public interests having to respond to the call of the railroads, the latter must now respond to the call of the public interests. When we want anything done in these cases we now send for those counsel and they come here. Under the old system they sent for us and we had to go wherever they specified in their notice, and take up the matter with them. I thank you, gentlemen.

Mr. BROUSSARD. I want to ask just one question. You referred to the old system. The adoption of the Sims bill abolishing the court would put that jurisdiction in the district courts?

Mr. ESTERLINE. I so understand it.

Mr. BROUSSARD. What would be the effect of that? You speak of the difficulties surrounding the old system in bringing these cases to determination. Would that system be improved by the Sims bill if the Commerce Court was abolished, or would it become aggravated?

Mr. ESTERLINE. As I understand it, it would become highly aggravated. Under the old system the statute provided that a bill to enjoin an order of the commission should be filed in the district in which was located the principal operating office of the carrier. Now, these carriers, of course, all work together; they move in groups and shift according to what is the best thing to be done after a conference. Take the Illinois Central, for instance, with its principal operating office in Chicago; and the Louisville & Nashville, with its principal operating office in Louisville. When an order of the commission is entered against them, it is easy enough for them to get together and say, "Where is the best place to bring this suit?" Some one will say, "Well, a case has already been decided up at the Chicago circuit which looks rather favorable to us, and we had better go up there." "Yes," says the Illinois Central, "that is the place to try

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this suit, and we will be principal complainant." Or, some one will say, "There is a decision in the Kentucky circuit which looks very favorable to us, and we had better go down there." "Yes," says the Louisville & Nashville, "you had better come along and let us be the principal complainant." Now, if I understand the Sims bill correctly, the suits may be commenced in any district through which the freight moves, and that necessarily means any district in the United States. Take Florida fruit and vegetables, for instance, from southern Florida—I think the Florida East Coast Railway Co. actually proved in a case that they shipped by railroad some of that produce to Alaska.

STATEMENT OF MR. CHARLES W. NEEDHAM.

Mr. NEEDHAM. Mr. Chairman and gentlemen of the committee. I appear here in my personal capacity and not in any sense nor in any degree do I speak for the commission. I have prepared a very brief statement, in order to save the time of the committee, and with your permission I will use that.

Mr. BROUSSARD. Will you tell the committee what your connection with the commission is?

Mr. NEEDHAM. I am the assistant solicitor of the Interstate Commerce Commission, and have been practicing before the Commerce Court ever since it was organized, having direct charge of some 35 or 40 cases in that court, and also of several cases in the Supreme Court.

The CHAIRMAN. Just proceed in your own way, Mr. Needham.

Mr. NEEDHAM. These suggestions are the results of my experience before the Commerce Court since its organization, in defending orders of the commission, and an experience of more than 20 years of active practice in other courts.

(1) A single court of original jurisdiction insures the most speedy determination of causes involving the administration of the act to regulate commerce.

Where the cases are all brought in one court it is possible to consolidate or unite in one hearing several cases involving the same questions; this can be done where the particular facts in each case differ in some degree. In the four test cases brought by carriers by water to test the validity of orders requiring such carriers to make full reports to the commission and keep their books in accordance with a uniform system of bookkeeping adopted by the commission, the cases were heard together; one series of exhibits was used, and only one argument was made by each counsel. The cases differed in some minor facts. These were discussed as separate propositions, and added very little to the length of time taken in argument over what would have been taken in a single case. This made the record short, and the cases were promptly disposed of. A short record was taken to the Supreme Court, where the cases were again heard together. Had the law permitted, these cases would have been brought in two district courts; there would have been separate records made, and they would have been argued separately, and the disposition of them would not have been uniform as to time and probably not in the results.

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In the Standard Oil Pipe Line cases, six cases were heard together, and they are now pending in the Supreme Court, and will there be heard together in October. If the law had permitted, these cases could have been brought in six different district courts; there would have been separate records and arguments, and long delays, with varying results; the cases would go to the Supreme Court upon separate records, and without agreement by counsel they could not be heard together.

The Tap Line cases, involving orders covering more than 100 roads (the order preventing rebating and discrimination in the large timber belts in Missouri, Arkansas, Louisiana, and Texas), were heard together in the Commerce Court this month. This hearing was not only satisfactory to the commission, but from the statement of Judge Garwood, in the course of his argument, I can say it was very satisfactory to the petitioners. There are other instances that might be cited. The saving of time in having these cases in one court, where the court can compel consolidation or unite the cases in one hearing, is of great importance in expediting the hearing and determination of these causes. It directly affects and often determines whether regulation shall be prevalent.

Another consideration in favor of the single court is that it tends to prevent legal discrimination. As indicated, these orders of the commission frequently affect very many railroads, serving a large territory; if one railroad could bring an action in a district court and restrain the order as to that road it would leave the order in effect as to the other defendants, thereby creating by operation of the law a discrimination. The act to regulate commerce is national in scope, and "was intended to afford an effective means for redressing wrongs resulting from unjust discrimination and undue preference." Every practice or procedure which may result in creating discrimination and preference between shippers or localities should be carefully avoided.

Again, these orders are effective for a period of only two years. If the cases are brought in the district courts the usual course of procedure in those courts, even where the cases are expedited, together with an appeal to the Supreme Court, will consume, in most cases, all the time the order has to run; and where a preliminary injunction is issued, and the case proceeds to the highest court, regulation is defeated, although the litigation may result in sustaining the validity of the order. Expedition is, therefore, a vital consideration in providing a forum in which these commerce cases shall be tried and disposed of.

(2) Uniformity of decisions. The purpose of the act to regulate commerce is to secure, so far as practicable, uniform standards of rates, and an equality of treatment for shippers and localities. To attain this a single administrative rate-making tribunal was constituted—the Interstate Commerce Commission. It is of equal and prime importance that the administration of the law controlling the commission in its administrative work should be unified and applied, so far as practicable, with uniform application over the entire country. These results can only be secured through the medium of a single court of original jurisdiction, in which the records of every case are to be found and made available for comparative purposes.

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In a case involving the question whether the old common-law remedy allowing a suit to recover from a carrier an unreasonable charge can now be brought by a shipper, etc., the Supreme Court of the United States, speaking through Mr. Justice White, now Chief Justice, said:

> For if, without previous action by the commission, power might be exerted by courts and juries generally to determine the reasonableness of an established rate, it would follow that unless all courts reached an identical conclusion a uniform standard of rates in the future would be impossible, as the standard would fluctuate and vary, dependent upon the divergent conclusions reached as to the reasonableness by the various courts called upon to consider the subject as an original question. (204 U. S., 426, 440.)

It is equally important that the application of the fundamental principles of law to the procedure before and the jurisdiction of the commission should be centralized in one court in order that the judicial administration of the act may tend toward uniformity. The Supreme Court will settle the fundamental questions involved in all of these cases, but the prompt and consistent application of the law to concrete cases is of the most vital importance in the administration of the act to regulate commerce.

In Interstate Commerce Commission *v.* Chicago, Rock Island & Pacific Railway (218 U. S., 88, 103) the Supreme Court, speaking through Mr. Justice McKenna, said:

> The outlook of the commission and its powers must be greater than the interest of the railroads or of that which may affect those interests. It must be as comprehensive as the interest of the whole country. If the problems which are presented to it, therefore, are complex and difficult, the means of solving them are as great and adequate as can be provided. And arguments which point out and assail the imperfection which may appear in the result this court has taken occasion to characterize. "They assail," it was said, "the wisdom of Congress in conferring upon the commission the power which has been lodged in that body to consider complaints as to violations of the statute and to correct them if found to exist, or attack as crude or inexpedient the action of the commission in the performance of the administrative functions vested in it, and upon such assumption invoke the exercise of an unwarranted judicial power to correct the assumed evils." (Interstate Commerce Commission *v.* Illinois Central Railway Co., 215 U. S., 452, 478.) It was, of course, recognized in that case that there must be power in the commission to make the order which might be subject to attack, but want of power was distinguished from the mere expediency or wisdom of making it, which, it was declared, was not open to judicial review.

Everyone who has practiced in this branch of the law is impressed with the fact that a judge who first considers these cases finds it difficult to take into consideration the extended effect and the public welfare as controlling elements in determining the validity of these orders. Judges who have been dealing with litigation between individuals, determining purely personal rights arising upon facts relating to the persons and particular subject matter, find it difficult to give controlling force to public policy and the public welfare in these cases. The orders may affect many roads; they frequently regulate practices extending over large portions of the country. To determine these cases by looking at simply the parties before the court and the particular facts relating to their controversy, and determining the case as a controversy between the railroad and the particular shipper involved, would result oftentimes in frustrating the beneficent purposes of the act. These cases must be looked at broadly. The whole country, and not the railroads or a particular shipper, is to be con-

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sidered. It may be asserted, I think, that the errors which have been made in these cases by courts of original jurisdiction have largely grown out of the inability of the judge at first to take a broad view of these questions.

The Commerce Court as constituted has five members, is a court of great dignity, and national in its jurisdiction. The benefits arising from consultation between five judges is of great importance; especially is this true where there is an application for preliminary injunction, which operates to stay the order pending the litigation. Judges who are familiar with the act, who know its purposes and objects, who have become familiarized with the practices of carriers, the subterfuges that are resorted to to evade the law, will not be easily deceived when a case comes before them that has not real merit; nor will they have to issue a preliminary injunction for the purpose of maintaining the status until they can study the law and prepare themselves to decide the issue. A court of experienced judges will act promptly upon all these questions, and their decisions will become more and more uniform and satisfactory to the public.

(3) The Commerce Court is a national court, and can be used for other purposes than the determination of commerce cases.

The jurisdiction in mandamus cases under the amendment providing for the valuation of railroads, passed at the last session of Congress, should, I think, be restored to the Commerce Court. The commission is located at Washington, and the court administering this law should be convenient and easy of access.

The jurisdiction of cases for writs of mandamus against the heads of the governmental departments in Washington could well be transferred from the District of Columbia Supreme Court to the Commerce Court. The issues in this class of cases are questions of administration in every way quite similar to those involved in reviewing the orders of the Interstate Commerce Commission.

This does not cover that. But that is a jurisdiction where the questions are almost identical to those arising in cases against the Interstate Commerce Commission, and it seems to me that it would give dignity to these cases if they were transferred from the local district courts of the District of Columbia to this national court.

The Supreme Court might be relieved of many appeals by transferring to the Commerce Court appeals from the supreme court in each of our insular possessions, and appeals in patent and bankruptcy cases.

This would seem to cover everything except Hawaii; I see no reference to Hawaii in the bill. I do not know why Hawaii is left out. I see that you have included Porto Rico and the Philippines, and it seems to me that it should include all of the insular possessions.

I do not think it desirable that the Commerce Court should be made a court of direct appeal from the district courts in patent and bankruptcy matters; but it could very well exercise the appellate jurisdiction which is now exercised by the Supreme Court of the United States. The results would be satisfactory in most cases. Power should be reserved in the Supreme Court to issue writs of certiorari in those cases which, in the opinion of the Supreme Court, ought to be reviewed by it.

Permit me to make one further suggestion regarding the personnel of the court. If you will take the pains to read and compare

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some of the early decisions of the Commerce Court and some of its later decisions, you will see a marked difference arising from what I have already noted, a growing familiarity with this branch of the law and the subjects upon which it operates. The four judges upon the court are able and very honorable men. If the one vacancy could be filled by a distinguished lawyer from the South, it would, in my opinion, be very desirable. This section of the country has had very important litigation before the court, and should be represented upon the court. With this addition I am confidant, from my experience in the court, that it will approve itself and its work to the country.

These are my personal views, and in no way do I represent the commission in this statement.

I was talking with one of the justices of the Supreme Court and I asked him what would be the number of these cases. I have not looked it up myself, but he told me that about 60 cases would be covered by this bill.

Now, may I refer to one or two things in the bill? On page 9 of the bill, in lines 8, 9, and 10 it seems to me that possibly you have opened a wide door there that ought not to be opened. It says:

And all such mandamus proceedings as may be brought to review any action of the Interstate Commerce Commission or any refusal to act.

Whether that language can not be construed by the court to give it power to take jurisdiction of any sort of mandamus proceedings is a question. Now, questions have arisen in some cases where petitioners have wanted the Commerce Court to mandamus the commission to file certain tariffs or to do certain things. While that would control the discretion somewhat of the commission, it does not seem to me that that clause is at all necessary to the act. I should substitute for it this language:

That all such mandamus proceedings as may now be brought before the Supreme Court of the District of Columbia against the Interstate Commerce Commission or any administrative tribunal or executive officer in the city of Washington.

The clause as it stands there now is a rather dangerous one, it seems to me, because it might be construed by a court of original jurisdiction as widening its jurisdiction to take jurisdiction of any mandamus proceedings that might be brought.

Mr. McCoy. What sort of action of the Interstate Commerce Commission would be reviewed in the mandamus proceeding?

Mr. Needham. A mandamus proceeding is always to compel action.

Mr. McCoy. Then you would not review any action in a mandamus proceeding?

Mr. Needham. Yes; in a way. It might be possible, if a suit in mandamus was brought to compel the performance of a particular act, or, as I have suggested, the filing of a tariff which was offered and refused.

Mr. McCoy. That would not be a review of any action; it would be a proceeding to compel action.

Mr. Needham. No, sir; it would be a review of their action; it would be to compel them to file what they had refused to file.

Mr. McCoy. You can not review something that has not happened. You could go to the Supreme Court and apply for a writ of man-

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damus to compel action; but, if they have acted, you would review it by a writ of prohibition, if you wanted to get at them in that way.

Mr. NEEDHAM. That is true in a general way; but this language is pretty broad, if you will read it.

Mr. McCOY. I see it is, and I thought it was so broad as to include something that you could not do.

Mr. NEEDHAM. I criticize it as being too broad.

On page 10 it speaks of their including in their report findings of fact. I should like to see the word "conclusions" substituted there for the word "findings." That is the word that is used in the act instead of findings. That is in line 23.

Mr. McCOY. What act do you refer to?

Mr. NEEDHAM. I refer to the general act as amended. That provides that they shall state in their report their conclusions of fact. Whether this is intended to broaden that language or not I do not know, but findings of fact might be so broad as to require them to find facts which they may not think were material to the issue. Their conclusions of fact upon which they base their order is very important.

Mr. McCOY. In the courts where I practice we speak of findings of fact and conclusions of law, and I think that is a very proper distinction to draw. What do you understand to be the difference between findings of fact and conclusions of fact?

Mr. NEEDHAM. That is following the language of the original act. I think it is more common, as you have suggested, in the practice to speak of findings of fact and conclusions of law.

The CHAIRMAN. If a judge or official acting in a judicial capacity finds a fact to be so and so and concludes the fact to be so and so, what is the difference in substance as to what he has done, whether you call it a finding of fact or a conclusion of fact?

Mr. McCOY. Only this, Mr. Chairman: The distinction we make is such that when you speak of findings you know immediately that findings of fact are referred to, but when you speak of conclusions we know at once that you are referring to legal conclusions. It makes it easier to argue cases, because you are readily understood when you use the words "findings" and "conclusions" without an explanation.

Mr. NEEDHAM. That is true; but in the act you will find it speaks of conclusions of fact, and when you meet with this language in this bill the question is at once raised whether it was intended to create something different from what is in the original act. That is all.

STATEMENT OF MR. JOHN B. DAISH, ATTORNEY AT LAW, WASHINGTON, D. C.

Mr. DAISH. Mr. Chairman and gentlemen of the committee, those who have preceded me, including the author of the bill, have so well and forcibly covered the ground, and covered the ground as I know it, both with respect to the necessity for the continuance of the special transportation court and also with respect to the necessity of relieving the Supreme Court in some way, and, in order to accomplish that, to transfer a certain class of cases to the Commerce Court, that I shall have very little to say, but shall direct the committee's attention briefly, by leave of the various interests of the country, to their positions in respect to the Commerce Court. I want to say,

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first, that, with stray exceptions, they are all in favor, first, of the continuance of the Commerce Court as a special transportation court. The exceptions are these—and, so far as I now recall, it is the opposition of only one association—namely, that unless to the Commerce Court shall be given jurisdiction to review negative orders of the Interstate Commerce Commission you ought to do away with the court. I shall refer to a telegram from the president of that organization in a moment. I am authorized by the president of the Baltimore Chamber of Commerce, an association of some 400 dealers in grain, flour, and similar commodities in Baltimore, to state that the chamber is on record in favor of the retention of the Commerce Court with such added jurisdiction as is necessary to make its jurisdiction effective. I think, if the committee wish, that while I refer to these letters it would be of advantage to have them included in the record as a part of my remarks.

The CHAIRMAN. That will be the order.

Mr. DAISH. The traffic manager of the New York Produce Exchange has transmitted to me for presentation to the committee a preamble and resolutions in favor of the Commerce Court. That was at the time of the consideration of the Broussard bill at the last session.

NEW YORK PRODUCE EXCHANGE,
New York, June 17, 1913.

Hon. HENRY D. CLAYTON,
Chairman Judiciary Committee, House of Representatives,
Washington, D. C.

DEAR SIR: The following is a copy of preamble and resolution adopted at a meeting of the board of managers of the New York Produce Exchange held August 1, 1912:

"Whereas under a recent ruling of the Supreme Court that the Commerce Court has no jurisdiction to review an order of the Interstate Commerce Commission which dismisses a complaint by the shipper, thus providing for the railroad a course of appeal which is not open to the shipper, resulting in an undue advantage to said railroad;

"Whereas there is now pending in Congress a bill known as House resolution 25572 'To amend the act entitled "An act to codify, revise, and amend the laws relating to the judiciary," approved March 3, 1911, and for other purposes,' which House resolution is designed to extend to the shipper the right of appeal to the Commerce Court from decisions of the Interstate Commerce Commission; be it

"*Resolved*, That the board of managers of the New York Produce Exchange hereby expresses itself in favor of House resolution 25572, and earnestly urges its enactment into law."

Yours, very truly, ——— ———, *Secretary.*

Mr. E. P. Smith, an attorney of Omaha, Nebr., has transmitted for presentation to the committee, a letter addressed to Representative Hitchcock, under date of December 18, 1912, as follows:

OMAHA, NEBR., *December 18, 1912.*

Hon. G. M. HITCHCOCK,
House of Representatives, Washington, D. C.

DEAR MR. HITCHCOCK: Permit me to say a word as to the advisability of continuing the Commerce Court, or rather as to the advisability of Congress making an appropriation so as to enable the court to continue in business.

I have had considerable to do the last few years before the Interstate Commerce Commission, and I realize, as every lawyer must who practices before that commission, that since it is not, strictly speaking, a judicial body, there must be some court, some place that will have jurisdiction to review questions of law passed on by the Interstate Commerce Commission.

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Before the organization of the Commerce Court the orders and judgments of the Interstate Commerce Commission could be called in question before any circuit judge in the United States if the residence of the parties interested would otherwise confer jurisdiction. My judgment is, it is infinitely better to have one court before whom all of these appeals must go rather than to have circuit judges all over the United States jumping onto the orders of the commission.

I think President Taft was exceedingly unfortunate in his selections of members of the Commerce Court. I believe the great criticism of that court has been the result of the make-up of the court. But the Supreme Court of the United States has reversed that court now in so many cases and has so clearly defined the power and jurisdiction of the Commerce Court that it seems to me it would be a mistake to abolish that court and let the United States judges all over the country have a chance to review the orders of the Interstate Commerce Commission.

If the law were so amended that appeals from the Interstate Commerce Commission could only go to the Supreme Court of the United States, I do not think any shipper would object to that. My interest in this matter is from the standpoint of the shipper. I have represented the Omaha Grain Exchange and a number of the grain shippers and lumber dealers here in Omaha in these controversies, and I look at it wholly from the standpoint of the shipper.

I have received a good many letters from attorneys over the country, some of them wanting me to urge the doing away with the Commerce Court, others urging that the court should be retained, but looking at it wholly from the standpoint of the shipper whose complaints are heard by the Interstate Commerce Commission, it seems to me it would be a great mistake to abolish the Commerce Court, unless at the same time it is expressly provided that all orders of the Interstate Commerce Commission can be reviewed only by the Supreme Court of the United States.

With personal regards, I am,

Yours, very truly, E. P. SMITH.

The position of Mr. Smith is a peculiar one in one way. He wants appeals from the Interstate Commerce Commission to go direct to the Supreme Court, which, of course, is entirely out of the question; but on the question of retaining the Commerce Court and giving it added jurisdiction he expresses the same views that have been expressed by the gentlemen who have preceded me. There was one gentleman who stated practically that unless you could give the Commerce Court this added jurisdiction the court should be abolished. That was a statement made before one of the committees at the last session by Mr. B. A. Dean, then the representative and now the chairman of the legislative committee of the National Hay Association, an organization of some twelve or fourteen hundred hay dealers. After making that statement and after hearing some other gentlemen he came back before the committee and said, "I have changed my mind on that; retain the Commerce Court and we will keep knocking away at Congress until they give us the added jurisdiction to review any negative orders."

I submit a telegram from Mr. E. Wilkinson, president of the National Hay Association:

BIRMINGHAM, ALA., *June 16, 1913.*

JOHN B. DAISH, *Washington, D. C.:*

National Hay Association has by resolution indorsed the retention of Commerce Court with power to review decision of commission adverse to complainant and defendant. Please present these views to House Judiciary Committee.

E. WILKINSON, *President.*

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I submit the following telegram from Mr. James H. Davant, commissioner of the Memphis Freight Bureau:

MEMPHIS, TENN., *June 16, 1913.*

Hon. JNO. B. DAISH, *Washington, D. C.:*

If agreeable, would gladly have you represent our views to House committee favorable to retention Commerce Court. A return to old system of appeals to circuit court would be retrogressive indeed.

JAS. H. DAVANT,
Commissioner Memphis Freight Bureau.

I also submit telegrams stating the views of William R. Wheeler, manager of the traffic bureau of the San Francisco Chamber of Commerce, and of Seth Mann, attorney, as follows:

SAN FRANCISCO, CAL., *June 17, 1913.*

Mr. JOHN B. DAISH,
Washington, D. C.:

Replying your letter, 13th, and telegram, 16th, will be glad to have you state our views as expressed in our telegram of June 4 to Hon. John J. Fitzgerald, as quoted in Mann's letter to you dated June 10.

WM. R. WHEELER.
SETH MANN.

JUNE 10, 1913.

JOHN B. DAISH, Esq.,
Hibbs Building, 723 Fifteenth Street, NW.,
Washington, D. C.

DEAR SIR: Responsive to your telegram of June 3, 1913, the following telegram was sent to Hon. John J. Fitzgerald, dated June 4:

"Best interest of shippers requires Commerce Court should be continued. Urgently request appropriation be granted.

"WM. R. WHEELER.
"*Manager of Traffic Bureau of the San Francisco Chamber of Commerce.*
"SETH MANN, *Attorney.*"

Very truly, yours, SETH MANN.

A letter has been transmitted from some of the railroads referred to this morning as tap lines to various Members of the House, and as it calls attention to the situation I think it should be included for the information of the committee. The letter bears the signature of Mr. R. S. Davis, chairman of the committee, and is as follows:

SHREVEPORT, ALEXANDRIA & SOUTHWESTERN RAILWAY SYSTEM,
Kansas City, Mo., May 26, 1913.

GENTLEMEN: You will recall that at a conference held at the Blackstone Hotel, Chicago, on June 29, 1912, Mr. John A. Sargent, Mr. Luther M. Walter, and the writer were selected as a special committee with instructions to go to Washington for the purpose of securing legislation giving the Commerce Court power to review so-called negative orders of the Interstate Commerce Commission. You are familiar with the work of your committee, the results obtained, particularly in connection with the tap-line cases, etc.

The last appropriation made by Congress provides for the continuance of the court until June 30. Unless Congress makes provision for the court within the next few weeks the court will be abolished, and the shippers of the country will find themselves without proper judicial machinery through which rate litigation may be adjudicated.

On May 6, 1913, Congressman R. F. Broussard, of Louisiana, introduced H. R. 4765. This bill confers on the Commerce Court jurisdiction to review negative orders in the following language:

"Cases brought to enjoin, set aside, annul, or suspend, in whole or in part, any order of the Interstate Commerce Commission, and it is expressly herein provided that any rule, decision, or determination made by the Interstate Com-

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merce Commission, dismissing any complaint made before it, shall be deemed an order of the Interstate Commerce Commission."

The first sentence is a reiteration of existing enactment. The second, in our judgment, properly and adequately confers the desired jurisdiction without enlarging the power of the court in respect to its present review of orders.

We respectfully recommend that you promptly communicate with your Senators and Representatives, urging them to enact legislation providing for the continuance of the Commerce Court, further expressing your approval of H. R. 4765, just referred to, and urging its enactment into law.

Yours, very truly,

R. S. DAVIS, *Chairman.*

S. H. Fullerton, Third National Bank Building, St. Louis; John A. Sargent, Keith & Perry Building, Kansas City; W. N. Barron, Poplar Bluff, Mo.; George K. Smith, Wright Building, St. Louis; F. R. Pierce, Fullerton Building, St. Louis; George E. W. Luehrman, St. Louis, Mo.; C. S. Keith, Keith & Perry Building, Kansas City; R. A. Long, R. A. Long Building, Kansas City; J. B. White, Kansas City, Mo.; C. D. Johnson, eleventh floor, Wright Building, St. Louis; Eli Weiner, Keltys, Tex.; W. T. Whiteman, Caro, Tex.; F. C. Broadway, Kansas City; L. L. Seibel, Kansas City, Mo.

I submit a letter from Mr. W. A. Mears, manager of the transportation bureau of the New Seattle Chamber of Commerce, as follows:

COURT OF COMMERCE.

TRANSPORTATION BUREAU, NEW SEATTLE CHAMBER OF COMMERCE,
May 31, 1913.

Senators Miles Poindexter and Wesley L. Jones; Representatives William E. Humphrey, Albert Johnson, and William La Follette; and Congressmen at Large J. A. Falconer and J. W. Bryan.

DEAR SIRS: We would like to draw to your attention and ask you to vote for H. R. 4765, a bill amending an act to codify, revise, and amend the laws relating to the judiciary. This bill meets with the ideas of this bureau, and, we believe, meets the ideas of a great majority of the shippers of this State. One of its most salient features is that it gives the Commerce Court jurisdiction to review orders of the Interstate Commerce Commission dismissing complaints of shippers. As the law now is interpreted, should the commission decide against the shipper the latter has no right of appeal, while the common carrier has. This seems a great injustice, and, in our opinion, this injustice is removed by this bill.

The shippers of this State do not desire the abolishment of the Commerce Court because of the present expediency in the settlement of cases that come before the commission and are appealed, and further because of the varying decisions of the United States district courts on the same question.

We hope you will see fit to meet with our ideas in this matter.

Yours, very truly,

W. A. MEARS, *Manager.*

I submit a letter from Mr. M. Dorian, treasurer of the American Graphophone Co., as follows:

AMERICAN GRAPHOPHONE CO.,
New York City, June 16, 1913.

Mr. JOHN B. DAISH,
Attorney at Law, Washington, D. C.

DEAR SIR: I hae yours of the 13th instant relative to the Sims bill concerning Commerce Court.

It will be impossible for me to appear before the committee at the public hearings on this bill, but I may say that our company is in favor of the retention of this court and the conferring upon it of competent powers and jurisdiction, believing that such powers and jurisdiction are necessary and desirable for the advancement and protection of the business interests of the country.

We have no objection to your quoting the above expression of our views to the committee.

Very truly,

M. DORIAN, *Treasurer.*

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I also submit a letter from Mr. William R. Tucker, secretary and assistant treasurer of the Philadelphia Board of Trade, as follows:

PHILADELPHIA BOARD OF TRADE,
Philadelphia, June 16, 1913.

MY DEAR MR. DAISH: Referring to your correspondence in re Commerce Court, I beg to say that I am authorized by the chairman of the committee on inland transportation to accept your services as offered, for the presentation of the views of the board of trade in the matter of the Commerce Court, knowing full well the interest you take in the matter and your thorough acquaintanceship with its details.

I have a telegram from you, and note the Democratic caucus on June 25 will pass upon the question of continuing the appropriations for the Commerce Court.

Yours, very truly, W. R. TUCKER,
Secretary.

JOHN B. DAISH, Esq.,
Washington, D. C.

I also submit a letter from Mr. H. G. Morgan, dealer in hay and grain, Pittsburgh, Pa., as follows:

PITTSBURGH, PA., *June 16, 1913.*

Mr. JOHN B. DAISH,
Hibbs Building, Washington, D. C.

DEAR SIR: I have followed with great interest the workings of the Commerce Court, and, as per my previous correspondence with you, I still think the court should be retained. I regret very much that I can not be present at the hearings this week. I would very much like to express my views in person to Chairman H. D. Clayton, but since this isn't possible, I wish you would state my position to the chairman and the Judiciary Committee. I believe in supporting any good organization that has for its purpose the furtherance of the general commerce of the country and the upholding of all good and reasonable law. This court can give impetus and direction in many very good cases. I have no doubt but that the worthy committee will have before it numerous very able supporting documents of this nature. It is therefore not my intention to place before it a long petition, for while such a petition may be exhaustive, too many of them become exhausting. I therefore leave it to yourself, Mr. Daish, to present my views, as you know them, orally, if you will, and I thoroughly believe the outcome can not but be in our favor and generally satisfactory.

Thanking you in advance for taking good care of this cause on my behalf, I am,

Yours, very truly, H. G. MORGAN.

The Boston Chamber of Commerce advised me, through their traffic man, that they have already petitioned for the continuance of the Commerce Court, and they have transmitted to me certain resolutions which they passed some time since. The resolutions are as follows:

JUNE 7, 1913.

(Sent to Hon. John W. Weeks, Hon. Henry Cabot Lodge, Hon. Andrew J. Peters, and Hon. Thomas S. Martin.)

DEAR SIR: The appropriation for the Commerce Court expires by limitation on June 30, 1913. There is now before the Senate a bill to do away entirely with the Commerce Court. There is also a bill before it to give the Commerce Court increased powers. The chamber's committee on transportation believes that neither of these bills should be passed, but that Congress should be petitioned to oppose legislation to abolish it.

The committee on transportation in January last placed itself on record as favoring the retention of the Commerce Court and opposing the passage of H. R. 4546. At that time the committee pointed out that while there had been considerable feeling against the court because of certain decisions it had made attempting to revise the decisions of the Interstate Commerce Commission, it was convinced that nearly all persons who are familiar with the work of the court, including members of the Interstate Commerce Commission themselves,

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are of the opinion that the principle of the court is an exceedingly valuable one and that it should be retained.

In the opinion of the committee the desirable objects attained by the court are:

First. It expedites the settlement of all questions of appeal from the decisions of the Interstate Commerce Commission.

Second. It provides a court which contains a majority of men thoroughly versed and experienced in the class of cases that come before it, and at the same time, by its construction, a proportion of new blood is infused into it each year.

Third. It provides uniform decisions, which would not be obtained otherwise, as in the absence of the Commerce Court cases would be appealable to the various circuit courts of the United States sitting in different parts of the country, resulting in varying decisions on cases involving the same legal points.

For the reasons stated above the committee on transportation again strongly urges that the present legislation to abolish the court be rejected and that an appropriation be made for its continuance.

At a meeting of the board of directors of the chamber on June 6 the report of the committee on transportation was unanimously adopted, and it was voted that the recommendations of the committee be communicated to you.

I trust that you are in favor of the continuance of the Commerce Court and that you will use your influence in preventing the passage of any bills which would abolish that court.

Very truly, yours, JAMES A. MCKIBBEN,
Secretary.

The Buick Motor Car Co., of Flint, Mich., asks for the retention of the court and for an added jurisdiction.

Mr. P. W. Coyle, traffic commissioner, St. Louis, Mo., wires me as follows:

ST. LOUIS, MO., *June 5, 1913.*

JOHN B. DAISH, *Washington, D. C.:*

Replying to yours of June 4, Mr. A. L. Shapleigh, president, and myself, have wired Representative Fitzgerald as follows:

"Representing Business Men's League of St. Louis, consisting of over 2,000 active business men, we respectfully submit that the Commerce Court is of inestimable benefit to the shipping and transportation interests of the country, and therefore urgently request that adequate appropriation be made for its continuance."

P. W. COYLE, *Traffic Commissioner.*

Mr. E. L. McHaney, an attorney of Little Rock, Ark., says that it is impossible for him to be here, and asks me to give his views in this behalf, and they are in accord with the views already expressed here this morning.

I am unable to find anyone to say anything against the court itself; some people have said something against the personnel of the court. All seem to agree that the system is right, and the personnel as now constituted is right.

Mr. E. G. Kalbfleifch, an attorney of Augusta, Ga., who has had some interstate commerce practice, asks that I express his views, which are in accord with those already expressed. He asks that the court be retained and the added jurisdiction given.

Mr. H. G. Morgan, a personal friend of mine, who is interested in these matters, also asks me to express to you his views favoring the retention of the Commerce Court.

The Maxwell Motor Car Co., through their traffic manager, request that their views be presented, and their views are the same as those I have heretofore stated.

It seems to me that there is one view that has not been touched upon by those who have preceded me, and it is this: Personally I have no knowledge of the fact, but some time since—I think it was

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at the last session—one of the enterprising newspapers of the country took a poll of the district judges to ascertain what they thought of the continuance of the Commerce Court. They were asked in the usual phraseology, and as a result of that poll the paper reported that the judges said that they did not care for this transportation jurisdiction. And well they may not. It has already been pointed out that they are vexatious, troublesome, and technical questions. I had the honor to argue a case recently before a judge who had never had a transportation case. He was a bright, intelligent, active, earnest, hard-working judge. The lawyers on both sides had to commence at the beginning. The case lasted three weeks, including the taking of some testimony.

The argument in that case lasted three days; not because the judge was not intelligent; not because he could not comprehend things; not because he did not know anything, but simply because we had to open the whole book of transportation law to that man. Now, then, when I come before this special court, when I make use of technical terms relating to transportation matters, that court knows what I am talking about; that court is versed in what is known as the lingo of the yard, and we do not have to commence with first principles; we do not have to argue one case for three whole days in submitting the case to the judge. I am assuming, of course, that the newspaper report I have referred to is correct, and if it is correct—and I have no doubt it is—it is no wonder that these district judges do not want this jurisdiction. The difficulties have already been pointed out. Moreover, the district judge ordinarily is a very much overworked man. He has all sorts of cases before him, and he does not want any more technical cases thrust upon him. I think that will conclude all I have to say, unless it be to direct the attention of the committee to certain hearings which have been held in the past in respect to this matter. Hearings were held on the bill H. R. 25572 by the House Committee on Interstate and Foreign Commerce, and there were certain hearings held before the Senate committee on bill No. 26680, making appropriations, and at that time there was before the committee a considerable amount of information from newspapers, magazines, shippers, and shippers' representatives.

The CHAIRMAN. I have heard it stated sometimes in criticism of the Commerce Court that that court was first formed with the idea that it would delay rather than expedite the execution of the orders of the Interstate Commerce Commission. I do not agree with that view, but I would like to have your view on that subject.

Mr. DAISH. I am very glad the chairman asked that question. In the first place, the figures show the length of time during which cases have been pending before the Interstate Commerce Commission, before the Commerce Court, and before the Supreme Court of the United States. The history of the formation of the Commerce Court is briefly this: In the fall of 1905, Judge Grosscup conceived the plan of settling transportation questions. In those days the Interstate Commerce Commission when it wished to enforce its orders—its orders were not self-enforcing—proceeded into court. That procedure was taken up by Judge Grosscup, and he said, "Let us have a special transportation court."

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In response to that demand a bill was introduced by Representative Hogg, of Colorado. A printed petition was presented to Congress, signed by 10,286 shippers of this country, asking the enactment of legislation which would provide a special transportation court for dealing with these matters. Copies of that petition are rather scarce. I have a copy, but only one.

During the early part of 1906 Congress saw fit to leave the jurisdiction of the courts in respect to interstate-commerce matters in the circuit courts, providing the particular forum in the act of 1906. From time to time, up until June 18, 1910, Congress had been asked to provide a special transportation court, and as a result of that came the Commerce Court. So far as I know—and I try to keep abreast of the times in these matters—a special court was opposed by the railroads, not so much, I take it, Mr. Chairman, upon the grounds of prospective delays—of course, delays are very troublesome to the shipping public—but it was a case in those days and will be the case if the Sims bill is passed; it was a case of picking—I say it advisedly, I do not mean in an iniquitous way—a favorite judge, maybe in a favorite locality, and often in localities you can have favorite judges, so that when you removed the local prejudice, when you brought the Santa Fe Railroad to Washington, you were on neutral ground, with four or five judges versed in these matters, and the court itself a national institution, separated from all possible influences, and dealing, certainly up to the present time, with nothing but transportation questions.

I think Mr. Denison and Mr. Esterline gave you the length of time it takes cases to go through the Commerce Court, and finally to be decided by the Supreme Court of the United States.

Mr. BROUSSARD. Please read this extract from the Attorney General's report.

Mr. DAISH. In the report of the Attorney General of last year there appears on page 55 the following:

> This latter statement shows that the average time which has elapsed between the filing of suit in the courts of first instance and the argument and submission of the case in the Supreme Court since the establishment of the Commerce Court is 9¼ months, whereas the average time previously required when the jurisdiction was in the circuit or district courts was 21⅛ months.

If it was the idea that a commerce court would delay, their expectations were not met.

Mr. BROUSSARD. Mr. Chairman, there are two or three other parties that I would like to have appear before the committee. They are not here now. We agreed on this hearing to-day only last Monday. They may not be here to-morrow. Will the committee leave the hearings open until Saturday, when we can finish up the matter in very short order? We have a session of the House, as I understand it, Friday. I want to say, among other things, that I am having prepared a statement of the condition of the docket of the Supreme Court, so that we may have the exact figures in regard to that.

The CHAIRMAN. Mr. Broussard, do you suggest 10 o'clock Saturday?

Mr. BROUSSARD. Yes, sir.

Mr. McCOY. Do you hope to get this bill enacted before the 1st of July?

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Mr. BROUSSARD. No; but it has been suggested that possibly this situation might require some action at this session, and that it might be taken up in the caucus on the 25th and exempted from the operation of the rule which the Democrats adopted in the last caucus. I would like to get the bill in shape, so the committee can report it in the event that action is necessary at this session.

There may be some parties—I do not know of any—who would like to be heard in opposition to the bill. The fact that this hearing has been held to-day will receive attention in the press, and those who may want to be heard before the committee will have ample time to appear on Saturday.

(Thereupon the committee adjourned until Saturday, June 21, 1913, at 10 o'clock a. m.)

COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
Saturday, June 21, 1913.

The committee this day met, Hon. Edwin Y. Webb presiding.

Mr. WEBB. The committee will be in order. Mr. Broussard, who is your next speaker?

Mr. BROUSSARD. I would like to present two or three arguments that have been sent by witnesses who could not come here. I have requested the deputy clerk of the Supreme Court to be here this morning with a statement as to the docket of that court and how the bill under consideration by this committee will affect that docket. He is here now, but before Mr. Maher speaks, I have here a copy of a letter addressed to the chairman of this committee by Mr. Thurmond, of Kansas City, and I ask permission to insert this copy in the record. If we get the original, we will put that in the record instead of using the copy.

Mr. WEBB. Without objection, that letter may be inserted in the record.

(Said letter follows:)

THE LONG-BELL LUMBER CO.,
Kansas City, Mo., June 16, 1913.

Broussard bill (H. R. 5902).

Hon. H. D. CLAYTON,
Chairman Judiciary Committee,
House of Representatives, Washington, D. C.

DEAR SIR: I understand that the above bill will be taken up before your committee this week. In behalf of a number of lumber companies and other clients who are large shippers, I wish to make some suggestions in favor of the passing of this bill by Congress.

I now have pending before the United States Commerce Court two suits—The Louisiana & Pacific Railway Co. et al. *v.* The United States et al., and The Woodworth & Louisiana Central Railway Co. et al. *v.* The United States et al. I wish to say, however, that my interest in the retention and in the extension of the jurisdiction of the Commerce Court I believe is not altogether selfish, and in what I have to say herein I know that I am giving the views and sentiments of a large number of shippers of the Southwest.

I desire to emphasize the fact that it is the shippers and not the railroads who will be benefited by the continuation of a Commerce Court and in the amendment made by the Broussard bill.

The railroads can generally get into court and have the decisions of the Interstate Commerce Commission reviewed by the courts. Under the law as it exists,

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if a shipper is denied relief before the Interstate Commerce Commission he has no opportunity to have such decision reviewed by a court.

It so happened that in my own practice, before the Commerce Court was established, I had occasion to prepare petitions for injunction on causes of action which grew out of the decision of the Interstate Commerce Commission in the so-called "Tap Line" case, and found it would be necessary to bring suits for my clients in order to test the question raised by the commission in the State court of Louisiana and in two Federal courts. If the suit had been brought in the State court, it would necessarily have gone to the Supreme Court of Louisiana, and if an appeal could have been taken at all from the Supreme Court of Louisiana to the United States Supreme Court the case would not have been finally decided by the latter tribunal under five years, and this would have been substantially a denial of justice. It was a serious question whether we could have gotten an appeal to the United States Supreme Court, and therefore very questionable whether we had any recourse in that instance to test the question brought about by the decision of the Commerce Commission. This was true, because we, in the instance I speak of, would not have been attempting to restrain the order of the commission, but would have been suing on contracts which we had, the violation of which was caused by the action of the commission.

In the instances where we could have gotten into the Federal courts we would have been in different districts, and possibly would have had different decisions by the different Federal judges and on appeal by different circuit courts of appeals; and in these cases a final determination of the question could only have been had by the Supreme Court of the United States, and could not have been reached, perhaps, under five years.

In addition to that we could not have sued the various trunk line railroad companies in one suit because of lack of jurisdiction over the parties defendant, but would, therefore, have had to maintain a multitude of suits. This was the situation when the Commerce Court first decided that under the Proctor & Gamble case it did not have jurisdiction of our "Tap Line" cases. Since the order of the commission was amended so as to give the Commerce Court jurisdiction, in its judgment, we have the "Tap Line" cases now pending before the Commerce Court, evidence submitted, and the cases argued. Under the law creating the Commerce Court an appeal can be promptly had to the United States Supreme Court, the cause advanced, and perhaps be heard in that court at the coming October term. All this is not for the benefit of the trunk line railroad companies, who are, perhaps, not very much interested in a speedy disposition of the question; but it is of vital interest in cases mentioned, to the short-line railroads, and to the thousands of shippers over these roads.

Two or three million dollars are involved directly in the cases in which I am counsel and which are now pending before the Commerce Court. Indirectly affecting shippers through freight rates, many millions of dollars are involved.

In my opinion there is no reason why the Commerce Court should not be given final jurisdiction in a larger number of cases and thus help to relieve the congested condition of the Supreme Court.

I sincerely hope that the Broussard bill will be favorably acted upon by your committee and passed by both Houses of Congress.

Yours, truly, W. R. THURMOND.

Mr. BROUSSARD. I also have a letter addressed to Mr. Daish. He being out of the city, it was forwarded to me from his office. The letter is from the Central Coal & Coke Co., of Kansas City, Mo. That I would also like to insert in the record.

Mr. WEBB. To whom is the letter addressed?

Mr. BROUSSARD. It is addressed to Mr. Daish—John B. Daish, who was a speaker here at the last hearing.

Mr. WEBB. Without objection, that letter may be inserted in the record.

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(Said letter follows:)

CENTRAL COAL & COKE CO.,
Kansas City, Mo., June 16, 1913.

Mr. JOHN B. DAISH,
Attorney at Law, Washington, D. C.

DEAR SIR: Replying to your favor of the 13th:

I have been corresponding for considerable time with various Congressmen and others in connection with the bill of Congressman Broussard for retention of the Commerce Court, and my position in the matter is this:

I believe that the Commerce Court lost its popularity by reason of the fact that it was not authorized to consider negative orders of the Interstate Commerce Commission, which resulted in its being a court of last resort for the carriers only, and the shipping public had no opportunity to be heard before that court. The necessity of quick action on these matters is obvious to anyone who is familiar with the condition of our courts, on account of the vast amount of work which they have on hand. The appointment of a special court for the purpose of expediting this work would be of vast assistance to the shipping public, but I believe the jurisdiction of the Commerce Court should be extended so that it could consider negative as well as affirmative orders, in which case the shippers would have their day in court, which they have not had under the law creating this court, up to this time, and herein I think lies the whole difficulty with the Commerce Court.

You are authorized to present these as the views of myself before the committee.

Yours, truly, CHAS. S. KEITH, *President.*

Mr. BROUSSARD. I ask the permission of the committee to insert in the record an article written in the North American Review by the Assistant Attorney General, Mr. Fowler, entitled "The Commerce Court." It is not a long article, but it is a very comprehensive analysis of this court and its work, and, with the permission of the committee, I should like to make it a part of the hearing.

Mr. WEBB. How many pages?

Mr. BROUSSARD. They are paged as they appear in the magazine, and I will have to count them. I find there are several pages.

Mr. WEBB. Without objection, the article referred to by Mr. Broussard will be inserted in the record.

(Said article follows:)

THE COMMERCE COURT.

[By assistant to the Attorney General, James A. Fowler.]

Under the interstate-commerce law as it existed prior to the passage of the act of June 18, 1910, in addition to criminal and penal actions, proceedings to compel the attendance of witnesses before the commission and actions to recover from carriers damages awarded by the commission cases of the following classes might be brought:

First. Actions for specific enforcement of an order of the commission other than for the payment of money.

Second. Actions to enjoin, set aside, annul, or suspend, in whole or in part, an order of the commission.

Third. Actions to enforce an observance of the published rates for carrying passengers or freight and to compel a discontinuance of forbidden discriminations.

Fourth. Mandamus proceedings to compel the transportation of traffic and the furnishing of cars and other facilities to a complaining relator and, on application of the Attorney General at the instance of the commission, to compel an observance of any provision of the act.

Prior to the act of June 29, 1906, known as the Hepburn Act, if the commission found that a carrier was guilty of unjust discrimination and ordered its discontinuance and the carrier was unwilling to abide by the order, it was

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necessary for the commission, or some party in whose interest the order was made, to bring an action for its specific enforcement. Furthermore, the findings and order of the commission were only prima facie evidence of the facts therein stated, and therefore in such proceedings all questions of fact were again contested before the court. Hence, while a number of cases had been brought to enforce orders of the commission, but very few, probably none, had been instituted to annul such an order. By the Hepburn Act not only was an order of the commission made conclusive as to all questions of fact, but it was provided that any carrier, or its representatives, who should knowingly fail or neglect to obey any order fixing a maximum rate or against unjust discrimination should forfeit to the United States the sum of $500 for each offense and that each distinct violation should be a separate offense, and that in case of a continuing violation each day should be deemed a separate offense. In consequence of this provision it was no longer necessary for the commission to bring actions to enforce orders of this character, but when the carrier believed that for any reason the order was to any material extent invalid it brought a suit to set aside or annul such order in whole or in part, and usually sought a temporary injunction suspending the order until the termination of the litigation.

In the report of the commission dated December 24, 1908, it was said that prior to July, 1908, only 1 suit had been filed to set aside an order of the commission, but that since that date 16 suits had been brought for that purpose, and that few orders of much consequence would be permitted to go without contest, and that in 12 of the cases brought preliminary injunctions had been prayed for, which had been granted in 6 and refused in 6. In the report of the commission presented a year later it appeared that out of the 17 cases referred to in the former report but 1 had been decided by the Supreme Court.

During the recess of Congress in 1909, by direction of the President, the Attorney General prepared a bill embodying his views as to proposed amendments to the interstate-commerce laws; and on January 7, 1910, the President transmitted to Congress a special message, in which he recommended among other things the creation of a special court to be composed of five circuit judges, which court should have jurisdiction over the classes of cases above enumerated, and offered to furnish to the appropriate committee on request a draft of the bill prepared by the Attorney General. This draft formed the basis of the measure which, after lengthy and heated debate, became a law on June 18, 1910.

The jurisdiction of the court thus created extends to the classes of cases as recommended by the President. To compose the membership of the court the President was directed to appoint, by and with the advice of the Senate, five additional circuit judges, no two of whom should be from the same judicial circuit, and who should be designated to serve for one, two, three, four, and five years, respectively. Thereafter, on the expiration of the term of any member, the Chief Justice of the United States designates for another period of five years his successor from among the circuit judges of the United States, and all vacancies are filled for the unexpired term by the Chief Justice from the circuit judges, and after the year 1914 no judge can be redesignated until the expiration of at least one year from his previous term of service. The court is presided over by the judge first designated for five years, and thereafter by the senior member. If at any time the business of the court does not require the services of all the judges, the Chief Justice may permanently terminate the assignment of any of them, or assign them for service temporarily in any district court or circuit court of appeals, but a concurrence of a majority of five judges is necessary for a decision. When the designation of a judge is permanently terminated, he returns to the circuit from which he was appointed. The court is required to be always open for the transaction of business. Its regular sessions are held in Washington City, but the power of the court or any judge or of any of its officers may be exercised anywhere in the United States, and to expedite the work and to prevent undue expense or inconvenience to suitors the court is required to hold sessions in such parts of the United States as may be found desirable. That carriers may be promptly and easily served with process they are required to designate some one in Washington City upon whom notices and processes may be served.

All actions which but for the act would be brought by or against the Interstate Commerce Commission must be brought by or against the United States, and the United States may intervene in any other case in which public interest is involved. The Attorney General has charge of the interests of the United

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States in all cases pending before the court, and may appoint special counsel to look after such interests. In any action involving the validity of an order of the commission any party in interest to the proceedings before the commission may appear as parties of their own motion and as of right and be represented by counsel, and all communities, associations, corporations, firms, and individuals who were interested in the controversy before the commission out of which the action grew, or in any suit brought under the interstate-commerce acts relating to the action of the commission, may intervene at any time, and the action can not be disposed of or discontinued by the Attorney General over the objection of an intervenor, but an intervenor may prosecute, defend, or conduct the proceedings unaffected by any action or nonaction of the Attorney General. The utmost simplicity in pleading is sought. An action is begun by filing in the office of the clerk a written petition "setting forth briefly and succinctly the facts constituting the petitioner's cause of action, and specifying the relief sought."

A motion to dismiss the petition, as not setting forth a cause of action, may be filed at any time before answer. Unless the time is extended by the court or a judge thereof, answer must be filed within 30 days after the petition is served, "which answer shall briefly and categorically respond to the allegations of the petition." No replication is necessary, and objections to the insufficiency of either the petition or answer may be made on the hearing. No order can be made suspending an order of the commission pending the final hearing otherwise than upon notice and after hearing, except where irreparable damage would otherwise ensue to the petitioner, the court or a judge thereof may on hearing, after not less than three days' notice to the commission and the Attorney General, allow a temporary stay in whole or in part of the order for not more than 60 days pending application to the court for its injunction, and in which case the order shall contain a specific finding based upon evidence submitted to the judge making the order that such irreparable damage would result to petitioner, and specify the nature of the damage. From an interlocutory order granting or continuing an injunction restraining the enforcement of an order of the commission an appeal may be taken to the Supreme Court of the United States within 30 days after the entry thereof. An appeal from any final decree may be taken to the Supreme Court by any aggrieved party within 60 days after its entry. Such appeal does not supersede or stay the judgment appealed from unless the Supreme Court, or a Justice thereof, shall so direct; and appeals from this court have precedence in hearing in the Supreme Court over all other cases except criminal causes. The Commerce Court may direct the original record instead of a transcript thereof to be transmitted to the Supreme Court.

The powers and methods of procedure of the court are thus given in some detail that it may appear that every precaution was taken to simplify the proceedings, to hasten the final determination of causes brought therein, and to safeguard the rights and privileges of every party interested in any matter of controversy before the court.

In the long session of the Sixty-second Congress a bill abolishing the court and restoring jurisdiction to the circuit courts was introduced in the House and referred to the Committee on Interstate and Foreign Commerce, and a majority of the committee filed a report strongly favoring the passage of the bill. Subsequently, in the legislative, executive, and judicial appropriation bill a provision was inserted repealing those sections of the act of June 18, 1910, by which the court was created, and the bill while in this condition thus passed both Houses of Congress, but on the 15th day of August, 1912, it was vetoed by the President because it contained a provision vitally modifying the civil-service regulations, and also this provision abolishing the Commerce Court. The bill was again passed by Congress after eliminating the civil-service feature, but on the 21st day of August, 1912, it was again vetoed by the President solely because it contained the provision abolishing the Commerce Court.

It is apparent, therefore, that there was a very radical difference of opinion as to the utility of this court between the President and those Members of the Sixty-first Congress who voted for its creation on the one hand, and a majority of the Sixty-second Congress on the other; and as it is a matter which vitally concerns the public welfare, a brief consideration of the reasons advanced for and against the court, both at the time it was established and when the measures for its abolishment were pending before the Congress, may be of value.

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The principal reasons assigned in favor of the court were that it would secure (1) a more expeditious hearing and determination of cases, (2) uniformity of decisions, (3) judgments less likely to be erroneous, and (4) a more economical and convenient method to litigants. These reasons will be considered in the order mentioned.

1. Before the creation of the court the venue of an action brought for the enforcement of an order was in the district wherein the carrier violating the order had its principal operating office, or in which the disobedience of the order happened; of an action to annul an order, the venue was in the district in which the principal operating office of any carrier against whom the order was directed was located, unless such office was in the District of Columbia—then in the district of its principal office; and of an action to compel observance of published rates or to prohibit discrimination, the venue was in the district wherein the violations were committed in whole or in part. As to actions to compel by writ of mandamus the observance of the provisions of the interstate-commerce law and to require carriers on application by a relator to furnish facilities to carry traffic on equal terms with other shippers, no specific provision was made, and such an action was apparently required to be brought in the State granting the carrier's charter, and in the district thereof wherein the organization of the carrier was maintained. Therefore these cases were scattered through a large portion of the United States, the greater number, however, being brought in those districts wherein most carriers had their principal operating offices.

In the Hepburn Act Congress had declared it the duty of the Attorney General to file in all cases of this character a certificate that in his opinion the case was one of general public importance, as provided for in the statute known as the expedition act. On the filing of such certificate the case was required to be given "precedence over others, and in every way expedited," and was set for hearing, both finally and for application for temporary injunction, before not less than three circuit judges, some of whom under certain circumstances might be district judges. From an interlocutory order granting or continuing an injunction an appeal could be taken direct to the Supreme Court within 30 days; and from a final decree such appeal could be taken in 60 days; and in the Supreme Court the case took priority in hearing and determination over all other causes except criminal causes. Congress had therefore done about all that could be done to hasten the final disposition of such cases, except to establish a court whose one and special duty was to hear cases of this character. Notwithstanding all these statutory provisions, the hearings of the cases were not greatly hastened. This was the result of the system: The litigation being scattered in various parts of the country, the attorneys looking after the cases could not keep them well in hand, and the district attorneys were usually unfamiliar with both the facts and the principles of law involved. Some of the courts in which many of the actions were brought had crowded dockets, and it required their entire time to prevent a further accumulation of business, and therefore they were not inclined to expedite these cases on their own initiative, but, to the contrary, responded slowly to pressure brought to bear by the litigants. Hence the speed at which they progressed was not satisfactory. That the Commerce Court has fully met the claims of its advocates in this respect there can be no doubt. In a statement showing a comparison between cases brought and disposed of under the two systems submitted by the Attorney General to Congress it appeared that prior to November 1, 1912, seven cases had been heard by the Supreme Court under the circuit court plan and six under the Commerce Court plan. Under the former system the shortest period between the institution of a suit and its argument in the Supreme Court was 9 months, and the longest period was 3 years and 30 days, while under the latter system the shortest period was 4 months and 20 days, and the longest was 1 year 1 month and 20 days. The average period under the former system was 1 year 9 months and 6 days, while under the latter it was 9 months and about 8 days—or an average difference between the two of 1 year. When it is remembered that a few days' additional delay may entail great financial loss upon a carrier, or possibly put out of business a complaining operator of an industry on a carrier's line, and that the life of an order of the commission is only two years, it will be seen what the average additional delay of a year means to the great transportation and industrial interests of the country, and also to the public in general, for which the public's interests may be indirect, yet it is upon the public that the burdens of high rates and unjust discrimination finally fall.

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2. The establishment of the Commerce Court also secures uniformity of decision in cases falling within its jurisdiction. As actions presenting the same questions were previously brought in different circuits, the decisions of the lower courts were not uniform in principle. But the disadvantages arising therefrom were greatly reduced by the fact that an appeal lay as a matter of right direct to the Supreme Court. However, while the hearings of these cases on appeal from the various circuits by the Supreme Court secured with reasonable promptness uniformity in the principles upon which they were decided, yet it did not secure real uniformity of decision, because each judge possesses his own peculiar bent of mind and there exists a broad latitude in applying a certain principle to a particular case.

3. A special court after it has been established for a time is also more experienced in this branch of the law, and better qualified to render a prompt and correct judgment. In its report upon the bill introduced to abolish the Commerce Court the majority of the House Committee on Interstate and Foreign Commerce took the position that it required no expert knowledge of judges to decide the questions presented in the classes of cases heard by that court. What was meant by expert knowledge the committee did not undertake to define. That this is a very distinct branch of the law no one will deny. Furthermore an examination of the opinions of the Supreme Court delivered in interstate-commerce cases will show that the questions presented have been among the most intricate and difficult of solution that court has ever had before it, which fact is further evidenced by the comparatively numerous reversals of the decisions of the lower courts. A mere glance at the many provisions of the statutes and a consideration of the vast transportation systems of the country and the enormous flow of interstate traffic, which is yearly increasing by leaps and bounds, will clearly indicate the many and difficult questions that must be presented to any court or courts upon which is imposed the duty of passing upon the validity of the orders of the Interstate Commerce Commission, and by mandamus proceedings to compel an observance of the provisions of the law. It is evident therefore that there must be a great advantage in trying these cases before a court which is familiar with the statutes and their construction, so far as they have been construed, rather than before courts which must be instructed in each case in the rudimentary principles of the law.

4. Whether or not it is more economical and convenient for the litigants to prosecute their actions before the Commerce Court is of such little importance as compared with the dispatch of the business and the qualifications of the court that it is hardly worthy of consideration. For the cases all to be heard by one court which has its principal sessions in Washington is undoubtedly more convenient for the Government and the commission, and as one of the judges assumes charge of and adapts himself to the convenience of the parties in the taking of evidence, the one method is probably about as convenient to the carriers and shippers as the other.

The principal objections urged against the court were:

First. That a special court fails to take as comprehensive a view of questions as courts who are accustomed to pass upon a great variety of subjects. In other words, that a special court is a narrow court.

There is force in this argument if the members of the court be taken from lawyers who have specialized in that branch of the law and be without experience in other branches, and especially if their tenure be permanent and their work confined to that special class of cases. Every lawyer who has had a varied practice knows how principles controlling one branch of the law may be equally applicable to an entirely distinct branch. But certainly this criticism can not be justly directed against this court as now constituted, and as it must under the present method be constituted in the future. It is composed at present of four[1] judges, only one of whom has specialized in interstate-commerce law, and he for years had been a member of the Interstate Commerce Commission, and was its chairman when appointed. Certainly it was quite proper for one member to be what might be termed an expert. Two had for a number of years been United States district judges, and the other member was a judge of distinction on a State court. After 1914 each year a new member will be drawn from among the circuit judges, and the several members will

[1]At this writing the vacancy caused by the successful impeachment of Judge Archbald has not been filled.

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from time to time be required to do much general work on the circuits. Hence this criticism is entitled to no consideration whatever.

Second. That the court will necessarily become prejudiced against the Interstate Commerce Commission, as that body will be continually under attack before it.

It might as well be urged that the court will become prejudiced in favor of the commission, as on one side of each case brought to annul one of its orders its action will be praised, while on the other it will be criticized. Opposing counsel can very well be left to offset any special feeling either for or against the commission.

Third. That there is not sufficient litigation to justify the existence of the court.

Since its organization the court has devoted fully half its time to hearing and considering these cases. Furthermore, interstate-commerce law is in its infancy. The first statute was enacted but 26 years ago. And when one considers the vast powers of the commission, the continuous exercise of which results in many orders vitally affecting the transportation, industrial, and commercial interests of the country, and also the character of complaints independent of any action of the commission over which the court has jurisdiction, it is apparent that actions will increase in number rather than diminish. Moreover, in the abovementioned report of the House Committee on Interstate and Foreign Commerce it was declared that there is sufficient work on the several circuits to which the members of the court belong to occupy their entire time. Hence, the establishment of the court did not create useless judgeships, and as this work must be performed by some court or courts it is better that it be done in such a way as to least interfere with other litigation.

Fourth. That the existence of the court tends to centralize power in Washington.

No Member of Congress undertook to show how the fact that its headquarters are in Washington can render it less efficient. Both the executive and legislative branches of the Government are centralized in Washington, and the head of the judiciary has always been located there, and their efficiency has never been questioned on that account.

Other objections were that it produces additional expense, and that it will be favorable to special interests, and be the object of popular suspicion and criticism. However, the total expense of the court is only about $35,000 per annum, a sum so insignificant in relation to the interests involved that it deserves no consideration; and the court is no more likely to favor special interests or to be the object of popular suspicion or criticism than any other Federal court.

In the report of the House committee heretofore referred to objection was strongly urged against that feature of the bill creating the Commerce Court which requires the actions theretofore brought by or against the Interstate Commerce Commission to be brought by or against the United States, and places the interests of the Government in charge of the Attorney General. In fact, the criticism was principally directed against a supposed suggestion of the Attorney General on the hearing before the committee that in suits wherein its orders are attacked the commission ought not to be represented by its own counsel; and it seemed to be thought that the fact that such a suggestion had been made was an argument in favor of the abolishment of the court. But under the statute the commission has the right to and in fact does intervene in every case, and the Attorney General can not take any action in any case which can prejudice the rights of the commission or any intervening individual without its or his consent.

In the proposed repealing act it was provided that all actions now brought by or against the United States should be brought by or against the Interstate Commerce Commission, who were to employ a solicitor to have full charge of all such litigation; and while interested parties were to be permitted to intervene, yet no protection of their interests was provided against the dismissal of the case or other action of such solicitor as now exists against the Attorney General. Thus, notwithstanding the great public interest in the questions involved in these cases, the Department of Justice was to be entirely excluded from appearing in them. Which plan is the more reasonable, the one excluding the commission or the one excluding the Department of Justice from such representation? There is certainly force in the reason advanced by the Attorney General that the action of the commission is like unto that of a court, and its appearance in court in defense of its order is analogous to the action of a court in

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defending in person its judgment when attacked in an appellate court. The reply that it is a legislative body and that no appeal lies from its action to the Commerce Court but the attack is collateral, is technical and not substantial. In fixing a reasonable maximum rate or prescribing what courts of conduct would be nondiscriminatory its action is legislative, but at the same time it must determine, as every court determines for itself, whether it is proceeding within the limitations of its powers. This is a question of law; and the question whether an order of the commission amounts to a confiscation of the carrier's property in violation of the Constitution is one of law and fact; and those are the questions reviewed by the courts in proceedings attacking an order. In fact, the mere legislative acts of the commission are not reviewable. Hence, the analogy between the appearance of the commission and of a court by counsel when its judgment is attacked is very close.

On the other hand, the United States, through a representative of the Department of Justice, is required to prosecute all criminal violations of the act, and it is a general principle that in litigation of general public interest such interests are looked after by the Attorney General or some one subject to his direction. Therefore, if either should be excluded from representation, clearly it should be the commission. But is it not altogether proper that both the Department of Justice and the commission be represented in these cases? They are of great importance, and it is helpful for their proper decision that they be presented from every standpoint. As said by the majority of the committee, the commission have made a special study of the principles upon which the order rests, and counsel familiar with the proceedings before that body can best present those principles from their point of view. On the other hand, the Department of Justice can assume very much the same attitude as the court itself. Furthermore, it sometimes happens that the commission construes some feature of the law favorably to the carrier, but on other grounds finds against it. In such a case the commission can not consistently claim that its order is justified under a different construction of the law, while the Department of Justice has no such embarrassment. Experience has already demonstrated that either the representative of the Department of Justice or counsel for the commission may raise a question not relied upon by the other which the court may consider as determinative of the case. Hence, the present method which provides for representation by both the United States and the commission is, I think, preferable to the exclusion of either.

Sentiment against the court has also been intensified by the fact that upon its organization it took what many believed to be too narrow a view of the powers of the commission and too broad a view of its own powers, and therefore nullified both temporarily and permanently many orders of the commission. But this criticism is equally applicable to the circuit courts, in whom it is proposed to reinvest jurisdiction. Twenty-five applications for temporary injunctions have been made to the Commerce Court. Of these 12 have been denied, 7 granted, and 6 are still pending. As shown by the report of the Interstate Commerce Commission in 1908, out of 12 applications theretofore made to the circuit courts for temporary injunctions 6 had been granted. It is true that out of 12 cases decided by the Supreme Court on appeal from the Commerce Court 10 have been reversed, but as they were the first cases heard by the court and there were 7 reversals out of 11 appeals from the circuit courts, this but demonstrates that this branch of the law is an intricate one and shows the advantage in having the cases heard by a court familiar with its principles. The court will, of course, at once adapt itself to the views of the Supreme Court, and, if permitted to continue, criticism of its action will doubtless soon cease. As the matter is one of such moment to the public, it is to be hoped that Congress will take no hasty action, but permit the court to continue for such a length of time as will fully demonstrate either the efficiency or inefficiency of the system.

Mr. BROUSSARD. I should like, with the permission of the committee, to read a letter from the assistant attorney general of Louisiana, special counsel for the railroad commission of Louisiana, written by him for the railroad commission. I should like to read this, if you will permit me to do so, because it presents the views of the commission in my own State, which has intervened in several of the suits in the Commerce Court in behalf of shippers in Louisiana.

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(Said letter follows:)

ATTORNEY GENERAL'S OFFICE, STATE OF LOUISIANA,
Baton Rouge, La., June 16, 1913.

Hon. ROBERT C. BROUSSARD, M. C.,
Washington, D. C.

MY DEAR SIR: I have just been advised of the result of the conference held on June 12 between you, Chairman Clark of the Interstate Commerce Commission, Representative Fitzgerald, chairman of the House Committee on Appropriations, Representative Clayton, chairman House Judiciary Committee, and Mr. Denison, representing the Department of Justice, concerning the Sims bills for the abolition of the Commerce Court, and the Broussard bill, H. R. 5902, which among other things gives jurisdiction of the Commerce Court to review negative orders of the Interstate Commerce Commission. I am also advised that hearings will be had during this week before the Judiciary Committee upon your bill—H. R. 5902.

It was my hope and expectation to be able in person to appear before the committee and present the views of the railroad commission of Louisiana and my own views as counsel for the commission in all interstate and State rate litigation.

Owing to the fact that I am engaged now in the trial of two important cases which will consume the best of this week, and also because of important hearings before the railroad commission of Louisiana, beginning on Tuesday the 24th, which require my personal attention, it will be impossible for me to leave at this time. I therefore take the liberty of writing you my views, hoping that you may present them to the committee for consideration.

The railroad commission of Louisiana has authorized and requested me at the same time to present to the committee their views upon the subject of the Commerce Court.

This letter is intended to be presented in lieu of my personal appearance before the House Committee on the Judiciary.

When the Commerce Court was created there was, as is known to every rate lawyer, among shippers as well as the railroads a chaotic condition existing in the United States in relation to the review of the orders of the Interstate Commerce Commission by the courts on appeal by the courts. Important orders were contested by the railroads in the Federal courts at the points of their selection, often in jurisdictions great distances from Washington, and where shippers' interests could not be watched, because often interested shippers were not informed of the pending litigation until after the decision of the court in which the suit was filed, and sometimes because of the great expense necessary in attending the trials. The delays which preceded the final determination of these important case were intolerable. There was a great demand all over the United States for a court of special jurisdiction located at Washington, where all cases could be promptly tried and speedily determined. The outcome of this popular demand was the creation by Congress of the Commerce Court. As is the case with all newly organized courts and commissions, the first cases filed brought forth the usual questions of jurisdiction, and any conflicts which have arisen between the Commerce Court and the Interstate Commerce Commission were the result of jurisdictional questions being presented to the court. These questions have been in the main disposed of, and the court is established in its work. The cases presented to the Commerce Court have been determined with dispatch, and neither the shippers nor the railroads have suffered the vexatious delays which occurred previous to its establishment.

Now, at the time when the Commerce Court has been established as a part of the judiciary system of the country, first comes the proposition to abolish it, and, secondly, comes the well-considered bill, prepared by yourself, to extend its jurisdiction.

It is the conviction of the members of the railroad commission of Louisiana and of the writer, who has for years been associated with the Louisiana commission, first as its secretary and for the last few years as its counsel, that the abolition of the Commerce Court would be a backward step, and should not be countenanced. It is a great commercial court, and its usefulness and power have been thoroughly established. It affords a speedy means of determining issues which may arise between the commission and the carriers under its control; and it is important to all shippers in the United States that when the commission adopts an order which is contested by the corporation required to

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perform certain acts or establish certain rates that the litigation resulting should be disposed of without delay. This end is gained by having such orders reviewable only in a court of special jurisdiction. So much for the court as it exists to-day.

But there is in the present law a gap which prevents the review by the court of an order of the commission dismissing a proceeding before it without granting the relief sought by complaining shippers. Such orders have been called negative orders. This term is somewhat misleading, but since it has been used to designate those cases in which the commission declines to grant relief desired, I will continue to use it. The lack of the court's jurisdiction over orders of the commission declining relief prayed for in specific cases or dismissing complaints is unquestionably a serious defect in the law creating the Commerce Court. This court should have the power to pass upon any constitutional question which may be involved in a proceeding before the Interstate Commerce Commission, whether the commission grants or refuses the order prayed for. In this way only can the entire rights of shippers be safeguarded, for it is likely that cases will arise from time to time, as they have done in the past, in which the commission may dismiss a complaint wherein an important constitutional question is involved and the shipper be left without relief. This necessitates an extension of the powers of the Commerce Court so as to review the negative as well as the affirmative orders of the commission.

The railroad commission of Louisiana has from time to time represented the shippers of the State of Louisiana in proceedings before the Interstate Commerce Commission. The most recent and important cases in which the Louisiana commission has appeared on behalf of Louisiana shippers is known as the Shreveport rate case. In this case, outside of the intrinsic unreasonableness of the rates attacked, there was involved a constitutional question of great importance, both to the railroad commission of Louisiana and to all other State railroad commissions—the question as to whether railroads could discriminate against interstate shippers shipping from border-line cities to points in adjacent States in favor of State shippers shipping between points within the same State, on account of rates made by a State railroad commission. It is true in this case the Interstate Commerce Commission found the rates attacked unreasonable and discriminative, and an affirmative order was entered, correcting the conditions complained of. Had the commission, however, adhered to former decisions in which it held that State-made rates were not the measure of reasonable interstate rates, and dismissed the complaint, the shippers would have been without a remedy, and the important questions involved could not have been reviewed by the Commerce Court. The destruction to the business of Louisiana interstate shippers would have, therefore, continued uninterrupted. This is an assumed condition which may arise at any time. It emphasizes the necessity for enlarging the jurisdiction of the Commerce Court.

It is impossible to conceive of any logical reason for abolishing the Commerce Court. It is composed of eminent jurists. It is highly qualified to perform its work. It brings into its decisions the experience and training of years in the study of the special cases which come before it. It is necessary to the complete system of railroad regulation in the United States. The Interstate Commerce Commission is a body of technical men, and among its members are found able lawyers, economists, and railroad men. Their work has attracted the admiration of the entire country. They are solving the most difficult transportation problems daily with satisfaction to all concerned. But there must ever arise between the commission and the litigants before it differences upon questions of law. The commission can not act as jury and judge; it can not be a commission and a court. Therefore it follows that there must be some court in which the orders of the commission may be reviewed and there always will be. It is far better that the Commerce Court, whose work is now established, should be continued and the defects in the law under which it exists corrected, rather than by any process either of elimination, strangulation, or direct repeal, the court should be abolished.

In the unexpectedly short time which has been given for the hearings before the committee it is impossible to discuss this subject as fully as is desired, and previous engagements—the writer being at this time engaged in trying important rate cases and the members of the commission about to enter upon a previously arranged session—prevent my personal appearance before the committee. I therefore submit these hurriedly prepared views for the consideration of the committee and hope, in behalf of the State of Louisiana as well as the

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entire United States, that action will be taken by the committee perpetuating the Commerce Court and enlarging its jurisdiction.

I carefully examined the bill which has been prepared and introduced by you recently when I was in Washington, and I am thoroughly in harmony with its provisions. If carried into effect, it will afford complete relief from the only criticisms which have been made against the Commerce Court in this section, namely, that its jurisdiction was eliminated, and the review of affirmative orders of the Interstate Commerce Commission.

With best wishes, I am,

Very sincerely, yours,

W. M. BARROW,
Assistant Attorney General,
Special Council for the Railroad Commission of Louisiana.

I thought I would read this letter because of the importance of the Shreveport rate case, which the Supreme Court confirmed not long ago, and the Tap Line cases, which are of such vast interest to Louisiana, Texas, Arkansas, North Carolina, Missouri, and all of the short roads throughout the lumber sections of the various States, in which suit the Louisiana commission has intervened in order to protect the short lines in the State of Louisiana, which constitute practically one-half of the short roads involved in that suit.

If the committee permits me to proceed as we did the other day, I would like to ask the committee to be kind enough to hear Mr. Maher, deputy clerk of the Supreme Court.

STATEMENT OF MR. JAMES D. MAHER, DEPUTY CLERK OF THE SUPREME COURT OF THE UNITED STATES.

Mr. MAHER. Mr. Broussard gave me a copy of his bill and asked me to look up some data for him in relation to the three classes of cases which are proposed to be taken from the Supreme Court and transferred to the Commerce Court. I have looked over the docket for the past term, which has just closed, and I find there were 35 appeals from Porto Rico, 12 from the Philippine Islands, and 46 appeals in bankruptcy cases, the three classes of cases which Mr. Broussard directed my attention to particularly. That is a total of 93 cases out of 1,180, the total number of cases on the docket for the past term.

Mr. WEBB. For the past term?

Mr. MAHER. Yes; the term that closed on Monday last.

Mr. FITZHENRY. How many bankruptcy cases did you say?

Mr. MAHER. Forty-six.

Mr. FITZHENRY. How many from Porto Rico?

Mr. MAHER. Thirty-five; and from the Philippine Islands 12. I have also prepared a table showing the number of cases filed and disposed of beginning with the year 1890, which was the largest docket the Supreme Court ever had, having a total of 1,800 cases. That was the term at which the Evarts Act, so called, went into effect. It shows the effect of that act on the docket of the court. The cases decreased from 1,800 in 1890 to 682 in 1904. When the court adjourned for the October term, 1904, they left undisposed of only 280 cases, the smallest number within my recollection since my connection with the court. Then it gradually increased until at the term before this last one it got up to 671 cases undisposed of. The court has done so well at this past term that when they adjourned the other day there were only 604 cases undisposed of, and of that number

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there were about 25 or 30 which have already been argued and which are now simply awaiting decision, which would leave to be heard at the next term about 575 cases, with the additions that may come between now and when the court meets in October.

Mr. WEBB. Will you state the number of cases docketed within the last year from the Philippine Islands and Porto Rico, and also the number of bankruptcy cases?

Mr. MAHER. Well, they all appeared on the docket of the last term. Of course, that docket covers a period of time for three years.

Mr. WEBB. That is what I was getting at. You did not mean to say that the cases were filed within the last year?

Mr. MAHER. Not at all; I did not want to be so understood.

Mr. WEBB. But they are the cases which have been filed during the last number of years?

Mr. MAHER. Yes.

Mr. WEBB. And are still pending and undisposed of?

Mr. MAHER. Yes. Some of them, however, have been disposed of at this term.

Mr. WEBB. I imagine so. You do not know the character or the importance of these cases pending from Porto Rico and the Philippine Islands?

Mr. MAHER. No, sir; I do not.

Mr. BROUSSARD. May I ask Mr. Maher some questions?

Mr. WEBB. Yes.

Mr. BROUSSARD. How long does it take a case from the time it is docketed in the Supreme Court to reach a final conclusion?

Mr. MAHER. If a case is not advanced for special reasons, it will take at least two years to dispose of it.

Mr. BROUSSARD. You have a table of the number of years?

Mr. MAHER. I have prepared a table covering a period from 1890, when the Evarts Act went into effect, down to and including the term just closed.

Mr. WEBB. Just give that to the stenographer, and it will be incorporated in the record.

(Said table follows:)

SUPREME COURT OF THE UNITED STATES.

Statement of cases filed, disposed of, etc., 1890–1912.

Term.	Number of cases filed.	Total number of cases on docket.	Disposed of.	Undisposed of.	Term.	Number of cases filed.	Total number of cases on docket.	Disposed of.	Undisposed of.
October term, 1890	623	1,800	610	1,190	October term, 1902	385	729	423	306
1891	379	1,569	496	1,073	1903	425	731	449	282
1892	275	1,348	414	934	1904	400	682	402	280
1893	280	1,214	500	714	1905	488	768	463	305
1894	332	1,046	406	640	1906	476	781	438	343
1895	382	1,022	489	533	1907	471	814	393	421
1896	284	817	434	383	1908	487	908	430	478
1897	302	685	372	313	1909	503	981	395	586
1898	520	833	529	304	1910	509	1,095	455	640
1899	370	674	371	303	1911	530	1,170	499	671
1900	401	704	368	336	1912	509	1,180	576	604
1901	383	719	375	344					

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Mr. BROUSSARD. Have you made any estimate of the cases coming from the Canal Zone?

Mr. MAHER. We have never had but one case from the Canal Zone and in that case the court held the writ of error that was allowed was incompetently allowed because there was no law to cover it.

Mr. BROUSSARD. But when the civil government goes into effect under the bill passed at the last session of Congress, or when it is put into effect by Executive order, a court will be created there, and of course there will of necessity be considerable litigation. At the present time the canal is being administered under military law, and there are but very few cases which find their way to the Supreme Court. I merely wanted to make that statement at this point.

Mr. WEBB. Are there any questions by the committee? If not, we thank you, Mr. Maher.

Mr. McCOY. I would like to ask Mr. Broussard a question. Suppose the Commerce Court were given jurisdiction over cases coming from the Philippine Islands and Porto Rico, and that some very serious constitutional questions are involved, and suppose this proposed bill should become the law? Under the law could the parties take questions of that kind to the Supreme Court of their own accord or could the Supreme Court itself bring such cases before it for consideration?

Mr. BROUSSARD. There is a provision in the bill for certiorari limiting the function of the Supreme Court merely to review the law involved but not the facts. We have a similar provision in the constitution of Louisiana, which prompted me to urge the same plan here. The circuit courts decide cases up to a certain amount to a finality, but if the law of the decision as rendered is contested by either side then they go to the Supreme Court for the interpretation of the law. But in doing that they present purely questions of law, and this proceeding does not involve a great amount of labor on the part of the court. It is simply an interpretation or review of the law.

Mr. McCOY. Then the scheme of this bill would be to have one appeal to the Commerce Court, and that questions of law could be taken up only on certiorari?

Mr. BROUSSARD. Yes, sir; that would present simply questions of law, and those questions the court would dispose of very rapidly. At the present time when the commission has determined a rate and issues an affirmative order the complainant may go into the Commerce Court, but only upon the law involved in the order and not upon the facts; the facts as determined by the commission are conclusive. In this instance, the facts would be conclusive as found by the Commerce Court, and only the law involved in the litigation would come to the Supreme Court.

Mr. McCOY. Why should not the Commerce Court be limited simply to a review of the law?

Mr. BROUSSARD. It is limited to a review of the law in so far as the commission is concerned.

Mr. McCOY. I mean on cases coming from the Philippine Islands and Porto Rico?

Mr. BROUSSARD. Well, that might be done, but I think the broader scope would be to permit them to consider the facts. They would not be hampered, and it would probably be better in the interest of

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litigants that the facts should go to that court, the object being to relieve the Supreme Court. You have heard of the condition of the docket in that court, and there is no chance of any great decrease being made, through no fault of the judges, however, because they work all the time. I know from reliable information that the judges work all the time and that there is no set of public officials anywhere that work harder. But they are simply overwhelmed because of the increased amount of work under the increased legislation of this country. When you come to consider the forty-odd legislatures of the States enacting laws right along, practically every day of the year, and then Congress sitting all the time, legislating along modern lines, along progressive ideas, the docket of the Supreme Court must continue to increase, and no doubt before long other classes of cases will have to be sent to some other court with the right of review upon questions of law. The clerk has told the committee that it takes practically two years, unless there is a special rule to advance the case, for the Supreme Court to finally determine a case. It is an unfortunate condition, but inasmuch as the Constitution places a dual restriction for the trial of cases in the Supreme Court by having only one court to try all cases, making a majority of the court—which I think is a good provision—a quorum for the transaction of business, that condition is bound to continue and will increase as legislation goes forward.

The Committee on Interstate and Foreign Commerce, of which I was formerly a member, reported a bill, which passed Congress, for the physical valuation of railroads, and a whole lot of litigation will grow out of that legislation. And these cases, and other cases, will continue to crowd the docket of the Supreme Court, and it is within the province of Congress to find a means whereby that court may be relieved of such a mass of business and avoid such delays as really amount to a denial of rights.

Mr. McCoy. My question went more to what the limit of the jurisdiction of the Commerce Court should be on appeals from the Philippine Islands and Porto Rico. I think that in a number of States—perhaps I am not correctly informed, but in Massachusetts, for instance—there is only one appeal and that is on the law, and I think there is a great deal of agitation in the country to have the findings of fact conclusive unless there is an error of law in the findings before the lower court. I was only suggesting whether it would not be wise to limit the Commerce Court to a review of the law and not give that court jurisdiction to review the facts, because that imposes a big burden upon the court; that is, the consideration of a big record, and that is one of the things that clogs a good many of the appellate courts, the fact that they must go over a great big record of facts.

Mr. Broussard. There are two things I would like to bring to the attention of the committee in reference to Mr. McCoy's statement. One is this: That if the docket of the Commerce Court was as crowded as the docket of the Supreme Court we might consider the advisability of shortening these cases by simply having questions of law presented to the Commerce Court; but that will not be the condition of the Commerce Court for some time to come, and until that condition arises, where that docket becomes crowded, it might as well review the facts as well as the law.

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Mr. McCoy. Is it not stated in this record that it takes nine months to reach a decision after an appeal has been taken to the Commerce Court?

Mr. Broussard. No; to reach a decision by the Supreme Court. The delay is not so much in the Commerce Court as it in the crowded docket of the Supreme Court.

Mr. McCoy. How long does it take to reach a case in the Commerce Court?

Mr. Esterline. It can be reached in five days. On an application for an injunction they have to give five days' notice under the statute, and it comes to a hearing on the question of the issuance of a preliminary injunction, and the court may decide that question in two or three days. If a preliminary injunction is issued we make a motion right away for final hearing and we hold right to it until we get it.

Mr. McCoy. And that takes about how long?

Mr. Esterline. They may take evidence for 30 days, and it may go along for two or three months.

Mr. McCoy. Do they take further testimony in the Commerce Court?

Mr. Esterline. Yes; they have taken testimony in some cases and in others they have not taken testimony; it depends upon the circumstances of the case. In the Intermountain rate case, as I said the other day, the preliminary injunction was issued in December and on the 19th of February the Attorney General was making his argument in the Supreme Court on final hearing.

Mr. McCoy. Was that case expedited?

Mr. Esterline. Oh, yes, indeed.

Mr. McCoy. I mean, it was advanced under the rule?

Mr. Esterline. Yes.

Mr. McCoy. So that would not be a typical case?

Mr. Esterline. No; but it shows what is possible. Of course, if an injunction is denied and the rates stand we are in no hurry about advancing the case. If an application for an injunction against an order denying the rates is not allowed we are not in any hurry about having it taken up because every day we are winning the case; the shippers get the benefit of the rates, and after a while the railroads become reconciled to the rates and allow them to stand. But if a case goes against us there is no time lost.

Mr. Broussard. I want to mention another thought in connection with questions asked by Mr. McCoy, and it is this, that cases which come to the Supreme Court from the Philippine Islands, from Porto Rico, and which will come to the court, a great many of them, from the Canal Zone, are under a different system of law; they involve a different system of law than in use in many of the States, with the exception of Louisiana. They have the Napoleon Code or the Spanish Code, which is an entirely different system from the system existing in all the States of the Union where the common law prevails. So that it is difficult, and I know whereof I speak, for a judge who has been concerned with common-law cases to grasp the difference between the two systems of law and apply it with that rapidity that his knowledge of the common law and his experience has trained him to apply in common-law cases. And when we mention the number of cases that the Supreme Court will be relieved of we do not

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really show the great relief that will come to that court. So that the number of cases which will be taken away from the Supreme Court does not show the great relief which will in reality be afforded.

That was the idea I had in mind, taking that class of cases away from that court and giving them to the Commerce Court, which could specialize upon these matters just as they have specialized upon questions of transportation.

Mr. McCoy. How are questions of fact determined in the Philippine Court of First Instance; by jury?

Mr. Broussard. Civil cases under the civil law are triable by the judge. Under the civil law, if you ask for a jury in the trial of a case you must make a deposit to pay the jurors, and you do not get this money back until after the case is finally determined, when it is taxed against the losing party, either plaintiff or defendant. That is the case in Louisiana; in Louisiana we seldom try any civil case before a jury unless it is a case involving damages from accidents; practically all other cases are tried by the judge.

Mr. Taggart. And in cases tried before juries the court may arbitrarily set aside the verdict?

Mr. Broussard. Yes, sir. I have seen cases of this character: After a jury trying a personal-damage case brings in a verdict, the judge, the very next morning, on his own motion, may set aside the verdict of the jury.

Mr. Webb. That is true in a great many States.

Mr. Broussard. Yes, sir. The civil law does not contemplate very much trial by jury. Of course, our criminal cases are tried by jury and under the common law.

Mr. McCoy. You mean that when the judge in a civil court sets aside a verdict he may do it practically arbitrarily, and that no matter how he does it there is no appeal because he does it. When a judge sets aside a verdict in a common-law court they can review his action.

Mr. Broussard. The only remedy you have is to put up more money to pay another venire and try the case over again. The tendency under this civil-law system is to discourage civil litigation before juries, and this system makes the judgeship a more important element in the court trial machinery.

When this character of cases comes before the Supreme Court it is doubtless much more difficult for the Supreme Court to reach what they consider a decision. In the United States court the lawyer practicing in New Orleans practices under the common law and in the State courts he practices under the civil law, and therefore he has taken a course in both systems of jurisprudence. They take courses in both the common law and the civil law, so that they are prepared to practice in both courts. I thought it was proper to call the attention of the committee to this because of the number of cases of that class that come before the Supreme Court that might properly come within these other classes, and I thought that possibly this committee might deem it proper to have these other classes of cases included here. I was strongly inclined to put them in this bill, but did not do so because I feared factious opposition to it.

Mr. Webb. There is a demand in reference to the review of negative orders.

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Mr. BROUSSARD. Yes, sir; that is a universal demand on the part of every shipper in the country. I do not know of any commercial body in the country that does not think that when the counsel for the commission advises the commission as to the law which results in the issuance of a negative order the action of the commission should be judicially reviewed. If the action of the commission is the granting of an affirmative order, the present theory of the law is that the commission's judgment is fallible, but if the counsel for the commission gives the commission his interpretation of the law which results in the commission saying, "No; we will not grant this order," the theory then is that the judgment of the commission, based on the advice of its counsel, is infallible. Under any system of law it is not conceivable that the opinion of counsel when given in one direction can be infallible, but when given in another direction shall be fallible. It is not the fault of the Commerce Court that this condition exists; it is not the fault of the commission that this condition exists, but it is the fault of Congress, which said, for some reason, I do not know why, "You, Mr. Railroad, can come into the court every time you are ordered to do something, but you, Mr. Shipper, shall not go into court on actions of the commission affecting your rights; you are foreclosed, because the commission is infallible upon that point." It is inconceivable to me how that theory could have entered into the legislation of this country. I can not conceive of any reason why it should be so, yet it is a fact that this anomalous condition does exist, and it is a condition that ought to be remedied.

Now, many of the controversies before the Interstate Commerce Commission are not controversies between railroads and shippers directly, but are controversies that arise between communities or between competitors in the same line of business. I might point out a case that occurred here recently involving the rate on tobacco from Henderson, Ky., to New Orleans. The rate on tobacco from Henderson, Ky., to New Orleans, for export to Europe on the same railroad, was 2 cents less, according as its destination in Europe was one point or another. In other words, the rate was, say, 23 cents on the tobacco on the same railroad, consigned by the same shipper from Henderson to New Orleans, but the rate on the same goods over the same railroad consigned by the same shipper and carried between the same points was 2 cents more, or, say, 25 cents if the consignment for exportation was to a different port in Europe. If the railroad received a just rate of 23 cents in one case, the service could not possibly be worth 25 cents in the other case, because the service of the carrier in both cases was identical. Now, the Board of Trade of New Orleans took up this question. The railroad commission of Louisiana has been very active in these matters; that is, in taking up these questions to the commission. It was shown conclusively that there was no difference in the service rendered by the carrier; it was shown that the tobacco was delivered at the same wharf on the river front, but the commission refused to grant an order. That made it a negative proposition, and that was the end of it. The chamber of commerce or board of trade could not go into court with it. I know of many other instances involving the same proposition.

Another case I have in mind involved the shipment of pig iron. Of course, I have gathered this information from newspaper accounts, and I have not investigated the cases, but am relying upon

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the information given me. Nor do I wish to be understood as criticizing the commission. Pig iron was shipped to Atlanta, Ga., at a lower rate than to New Orleans, although the haul to New Orleans was shorter than the haul to Atlanta. This pig iron was consigned to foundries engaged in the manufacture of sugarhouse furnishings. The rate on the pig iron to Atlanta was cheaper than the rate to New Orleans, although, as I have said, the haul to New Orleans was shorter. The board of trade took that proposition up with the commission in an effort to equalize the rates. The Board of Trade of New Orleans complained that Atlanta was getting the benefit of a trade that rightfully belonged to New Orleans. The manufactured material was used in Louisiana; yet it was cheaper to take the pig iron to Atlanta and manufacture it to be sold in Louisiana. At any event, the board of trade thought that it was a matter of sufficient importance to take up. In that case a negative order was issued, and the board of trade could go no further. They were stopped at that point; but if an affirmative order had been granted, that order could have been appealed by the proper body and adjudicated in court. There are two or three other cases of the same character that I have heard of and could bring to the attention of the committee. I do not personally know of these cases, but rely upon newspaper accounts. I do not know that these are authentic decisions. I know, however, that wherever the action of the commission is of a negative character, or is not to issue an order at all, that is the end of the controversy. When the commission so interprets the law that it deems no affirmative action by the commission necessary or proper the theory of our law is that they are infallible in that judgment, but when they so interpret the law as to deem affirmative action necessary the theory of our law is that their judgment is fallible.

Mr. TAGGART. When the commission issues an order directing a carrier to do a thing that order lasts two years, does it not? I understood counsel to say that when an injunction was granted against the execution of an order and an appeal taken the order is negatived by the proceeding itself; that is, that the appeal takes up the two years' time——

Mr. ESTERLINE (interposing). Exactly——

Mr. TAGGART (interposing). Do you remedy that condition in this bill?

Mr. BROUSSARD. Yes, sir.

Mr. ESTERLINE. That was true under the old system, but not under the Commerce Court system.

Mr. TAGGART. Do you mean to say that is not the law now?

Mr. ESTERLINE. No, sir; that was true under the old circuit court system.

Mr. TAGGART. Then, they were making that point in behalf of the continuation of the Commerce Court?

Mr. ESTERLINE. Exactly.

Mr. FITZHENRY. Have you investigated the character of cases which now remain undisposed of by the Supreme Court?

Mr. BROUSSARD. Only a few of them. Some of them are of such national importance that the newspapers have published lists of those that had to remain over. The court sat one month longer than it ought to have sat under its rules.

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Mr. FITZHENRY. The intermountain cases were not decided. There were 604 cases remaining on the Supreme Court docket undisposed of. Now, have you attempted to make a classification or digest showing the nature of those 604 cases?

Mr. BROUSSARD. No, sir; I never have done so; and it would require considerable work to do that.

Mr. MCCOY. The Intermountain cases were argued?

Mr. ESTERLINE. Yes, sir; twice.

Mr. BROUSSARD. I am informed by Mr. Esterline that there was advanced on the docket a sufficient number of cases to require the time of the Supreme Court up until Christmas before they can take up the general docket and proceed with the consideration of the ordinary cases.

STATEMENT OF MR. FRANK BARRIE, OF SYRACUSE, N. Y.

Mr. BARRIE. Mr. Chairman and gentlemen of the committee, I was asked by Mr. Broussard to state to the committee what I know of the sentiment of the shipping public and the business public generally in regard to their desire for the maintenance for this Court of Commerce.

The CHAIRMAN. What is your occupation?

Mr. BARRIE. I am engaged in business as the traffic manager of the Syracuse Traffic Bureau. My business for many years has also been as secretary and manager of the Interstate Commerce Law Convention. I have been in intimate touch with the great business interests which have been organized into this Interstate Commerce Law Convention, and that I think will enable me to speak with certainty as to the general sentiment of the business interests in regard to the necessity and desirability of maintaining a special tribunal to handle cases from the Interstate Commerce Commission and obtain an expeditious determination of those matters. The Interstate Commerce Law Convention is an organization which was formed in 1890, after the decision of the Supreme Court finding that the orders of the Interstate Commerce Commission could not be made to state what the rate should be for the future or to correct one found to be unjust and unlawful. There were a number of cases coming up where we found that, while we could get relief at the hands of the commission, the order was unenforceable. For instance, when I was the secretary of the Millers' National Association of the United States the differential between grain and flour for export for many years had been on a parity. After that a small differential was commenced and was extended until it got as high as 15 cents and 17½ cents in favor of wheat as against flour for export. We appealed to the Interstate Commerce Commission on that question, supposing that the act of 1887 would afford us relief, and we got an order from the Interstate Commerce Commission to the effect that the differential should never exceed 2 cents per hundred. The railroads declined to conform to that decision or order upon the ground that the commission had no right to say what the rates should be, and we were powerless in the matter. Therefore, we became convinced that it was necessary to amend the interstate-commerce law. We called a conference of the representatives of the other national associations with us in 1899, and

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that called meeting appointed a special committee to draw a bill to amend the act to regulate commerce.

As soon as that action was announced in the papers we began to hear clamors from other associations who wished to join with us. We therefore organized on a broader basis, and that organization became known as the Interstate Commerce Law Convention. The purpose of that organization was not to solicit or endeavor to secure legislation at Washington; it was for the purpose of obtaining a concentration of the ideas of the business public and a concentration of opinion in regard to the regulation of common carriers. To this end a central committee was appointed to draw up such legislation and such bills as might be deemed best, and then the purpose was to proceed to secure the enactment of such legislation through the means of the various State associations, through their contact with their respective Representatives in Congress and Senators. There was absolutely no lobbying in any sense done by our association itself in Washington. Now, in order that you may know the representative character of our organization, I will give you the names of the members of the executive committee of the Interstate Commerce Law Convention. They are as follows: E. P. Bacon, Milwaukee, Wis.; J. E. Howard, Wichita, Kans.; R. S. Lyon, Chicago, Ill.; S. H. Cowan, Fort Worth, Tex.; Wm. Larrabee, Clermont, Iowa; R. W. Higbie, New York, N. Y.; Wurdo MacKenzie, Trinidad, Colo.; G. S. Gardiner, Laurel, Miss.; Adolph Mueller, Decatur, Ill.; J. M. Mason, Charlestown, W. Va.; L. C. Slade, Saginaw, Mich.; J. H. Call, Los Angeles, Cal.; W. E. Hughes, Denver, Colo.; and H. R. West, Cincinnati, Ohio.

These gentlemen constitute our executive committee. These gentlemen, forming the executive committee, held frequent meetings, and mass meetings of the convention were held once a year and general reports were made to them. Now, we began in the Fifty-sixth Congress and had introduced by request a bill. Senator Cullom introduced the bill, which was known as Senate bill 1439. That bill never got out of committee. We then came to the Fifty-seventh Congress with a bill, which was introduced in the Senate by Senator Nelson, of Minnesota, and in the House by Mr. Corliss. The Corliss bill was H. R. 8337; it was introduced in the Fifty-seventh Congress, in 1901. That bill never came to any action. That bill was referred to the committee, but it never got out. In the Fifty-eighth Congress a bill was introduced known as the Quarles-Cooper bill. The bill introduced by Mr. Cooper in the House was H. R. 6273. That bill failed of passage, and in the Fifty-ninth Congress we had introduced the Esch-Townsend bill, which was afterwards consolidated and subsequently withdrawn in favor of the Hepburn bill, H. R. 18987, which was introduced in its place. On these bills most extensive hearings were had before both the Senate and House Committees on Interstate and Foreign Commerce, and a record of these hearings will show that the testimony given by every one of our people sets out the organization of which he was a member and what the organization consisted of, and this shows that we had 516 associations, comprising an individual membership of 200,000 of the principal business men of this country, making it the largest and most representative organization of business men ever formed in this country. In the last session we had 350 associations represented in the convention.

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Mr. WEBB. Are you the representative of this association?

Mr. BARRIE. Yes, sir. The object for which this association was formed was to consider the question of the regulation of common carriers.

Mr. WEBB. Are you authorized to speak for them to-day?

Mr. BARRIE. I have that right; yes, sir. Now, I want to say further, referring to these hearings, that nearly all of the interests were represented, and they stated their desire not only that the commission should have the power to say what rates should be made, but that the order made by the commission should be enforcible quickly. It is of vital importance to the business man that the determinations of the Interstate Commerce Commission shall be promptly enforced. I know that a great many men have been put out of business because of the long delay in securing final determinations of rate questions by the commission. A great many goods are bought on contract. These contracts of purchase vary in time from 6 to 12 months. Now, possibly at the time when such a contract is made for a future purchase the railroads may have in operation a favorable rate, but before the time arrives for the shipment of the commodity the rate may be raised 5 or 7 cents per 100 pounds, and if that rate is carried out it will inflict a destructive loss upon the business man who has made the contract. Now, then, if he appeals to the Interstate Commerce Commission and gets an order, it is very important to him that the order shall be determined finally before he is driven out of business or dies. Therefore we have always felt and have always argued for a special court for the determination of these questions. The bill introduced by Mr. Townsend which was passed in 1910 and known as the Commerce Court act, was submitted to and approved by our organization. However, we have always been disappointed in the terms of that act, because while it provides for the review of affirmative orders it denies to shippers the right to have negative orders reviewed. We have been urged repeatedly during the last two or three years to call the association together and get it again into a state of activity, call another convention, and proceed upon the lines that secured the amendment to the act to regulate commerce and endeavor to secure just what Mr. Broussard's bill proposes to do. I feel perfectly confident that if we had another convention it would approve this bill. I know what their opinion is, because I have received a great many letters on the subject. I have received a large number of letters approving the idea embraced in this bill. I had a letter from Mr. Bacon, who wrote me not long since about as follows:

> I heartily approve of the idea in Congressman Broussard's bill. If the law can not be amended so as to give the shipper his day in court, I would rather see it wiped out entirely until we can get a new enactment on the subject.

Mr. WEBB. Has your organization indorsed this bill?

Mr. BARRIE. Yes, sir; that is to say, I believe the terms of the Broussard bill meet their full approval. If I should submit it to the association in conference, I am sure that it would meet their general approval.

Mr. FITZHENRY. When does your association meet?

Mr. BARRIE. There has been no occasion for a meeting since 1907. The organization stands intact, and we have voted not to disband it,

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and that convention might be called together now, and we could proceed as we did before.

Mr. FITZHENRY. Is your organization represented in many States?

Mr. BARRIE. It is represented in every State and Territory in the Union. I now want to read you from the testimony of Mr. E. P. Bacon before the House Committee on Interstate and Foreign Commerce in 1902. On that occasion Mr. Bacon said:

> The reason, the necessity for that, arises from the fact that under the present law the operation of the order of the commission is suspended until it has passed through various stages of litigation, which, according to the statements of the Interstate Commerce Commission, have averaged in the various cases which have been taken before the court a period of four years. It is evident to anyone familiar with traffic affairs that when a rate or practice has been found unjust or unreasonable by a competent body, such as we believe the Interstate Commerce Commission to be, if that action has to be suspended for a period of four years, or even for a period of two years or one year, the occasion has passed by for deriving any benefit from it; it practically nullifies whatever action the commission may take. It suspends its action for such a period of time as to render it entirely valueless.

Now, I have here a copy of the report of the last convention of our organization, held before the passage of the Hepburn bill, which I obtained from the library of the Interstate Commerce Commission yesterday afternoon. The number of active delegates was 357, and this book gives also a list of the States represented in the association.

Mr. DYER. Have you a list of the organizations represented now?

Mr. BARRIE. Yes, sir.

Mr. DYER. I would like to have that in the record.

Mr. BARRIE. I can leave this book with the committee for reference. It contains the information you desire.

Mr. WEBB. Do you want him to furnish a list?

Mr. DYER. I do not care for a list of the delegates who attended this convention. I would like to get some idea of its character and what States are represented in it.

Mr. BARRIE. I will leave this document with the committee. It contains all that information.

Mr. BROUSSARD. I would like to call the attention of the committee to a case illustrating what I was saying awhile ago. In an actual case before the Commerce Court a shipper claimed reparation before the commission on an overcharge on a carload of fertilizer of $54. The railroad company delivered the freight on a certain day, and six months later it collected the freight. The shipper filed his claim more than two years after the freight was delivered, but less than two years after the freight charge was paid. Now, the query arose, Does the statute of limitations run from the day the freight was delivered or from the day the overcharge was paid? The commission held that the statute of limitations ran from the day the freight was delivered, and dismissed the complaint for the recovery of the $54 overcharge. That was a negative order, and was of course not reviewable. If it had been an affirmative order, it could have been reviewed. If the ruling had been favorable to the railroad, the railroad could have gone to the court for a decision. Now, that is only one of a great many cases of a similar character where overcharges are made. I merely wanted to cite that illustration, not in criticism of the Interstate Commerce Commission at all, because they are entitled to their view of the law, but simply to point out that this

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is a question which should be passed upon by a court. These are judicial questions and should be reviewable by the court.

Mr. FITZHENRY. As I understand it, when petitions are denied by the Commerce Court, the only way to get the Supreme Court to review that appeal from the Interstate Commerce Commission to the Commerce Court is by application for a writ of certiorari to the Supreme Court?

Mr. BROUSSARD. Yes.

Mr. FITZHENRY. Have you any information to show the average length of time required for the disposition of such cases in the Supreme Court?

Mr. BROUSSARD. The only information I have is contained in a report of the Attorney General upon these cases. The average time required in cases——

Mr. FITZHENRY (interposing). But that is where cases have been set ahead on the docket.

Mr. BROUSSARD. The average time required in all cases I think is stated—that is, for the whole number of months that these cases have been before the court. I am informed by the Assistant Attor-
stated—that is, for the whole number of months that these cases
as of great national importance, and that the average time required under that system has been nine and one-third months for each case—that is, from the date the commission renders its decision until final judgment is rendered by the Supreme Court. Now, under the circuit-court system, when railroads could go into any of the nine circuits of the United States, the average time required, prior to the creation of the Commerce Court, was 23⅓ months—a period almost as long as the life of the order itself.

Mr. WEBB. Mr. Broussard, do you regard this bill as an emergency measure that we should take up in the caucus and ask leave to report, notwithstanding the rule of the caucus? I would like to have an expression of your opinion in reference to that.

Mr. BROUSSARD. As to where the suggestion of that question came from I would not like to say anything about, but that there is urgent necessity for action I am thoroughly convinced.

Mr. WEBB. Don't you think that the question of greatest necessity is the continuance of the court?

Mr. BROUSSARD. The question of necessity is not only the continuance of the court but it is also the fixing of its jurisdiction over questions of law where the commission refuses to grant an order.

Mr. WEBB. That is to give it jurisdiction of appeals from negative orders?

Mr. BROUSSARD. Yes, sir.

Mr. WEBB. But that is a question that could be taken up this winter, is it not?

Mr. BROUSSARD. Yes, sir. I want to say this: That at the conference which was referred to in the letter from the assistant attorney general of Louisiana, which I might say was brought about by me, when the chairman of the Interstate Commerce Commission, Mr. Dennison, the Assistant Attorney General, and I had a conference with the President, the question came up as to whether an appropriation ought to be made now to continue the court or whether the Sims bill to abolish the court should be included in the urgent deficiency bill that is to be reported.

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Mr. WEBB. That is a matter for the Appropriations Committee.

Mr. BROUSSARD. Yes, sir. Then it was suggested that the matter should be brought to the attention of the caucus on the 25th. I am not so clear myself why a question involving the jurisdiction of a court should be made a party matter, but I feel confident that those who want to abolish the court will bring it up in the caucus.

Mr. DYER. You do not consider it a party matter?

Mr. BROUSSARD. No, sir; I do not consider it in any sense a party matter, although there has been some action taken that would seem to indicate that it was a party matter, but it has never been so considered by me.

Mr. MCCOY. It is not in the Baltimore platform?

Mr. BROUSSARD. No, sir. The Bull Moose Party made it an issue. They have a declaration in their platform in favor of the abolishment of this court.

Mr. DYER. Did not the action taken at the last session of Congress indicate that it was a party issue or that a party question was involved in it?

Mr. BROUSSARD. No, sir; it did not indicate that; it indicated this: That the Interstate and Foreign Commerce Committee, of which I was a member at the time, was against this court, and, of course, most of the Democrats in the House when the question came up went with the committee. There never was any caucus action upon it.

Mr. MCCOY. Do you think that the unpopularity of the court is due at all to the fact that they have not any power to review these negative orders?

Mr. BROUSSARD. I do not think there is a bit of doubt about that. A letter which has been referred to here is to that effect. If the shipper feels that he has not had his day in court it puts him against the court itself. There is no question about that. The shipper is almost universally the complainant, and when he finds out that when, on an order issued against him, he appeals to a court, the court will not hear him, he becomes prejudiced against that court. Of course, that is not the fault of the court; it is due to faulty legislation; it is the fault of Congress. Congress should have given the shippers the right to appeal on negative orders just as the railroads now have the right of appeal when they are directed to do something by affirmative orders.

The CHAIRMAN. Do you think it proper that this committee should hurry up and report this bill even though the appropriations committee should make provision for the continuance of the court?

Mr. BROUSSARD. I will say this: I do not think that legislation of this character ought to be rushed. I think the committee ought to give it most careful consideration. I think the committee might invite more people here to be heard. I have written letters to every Member of Congress and every Senator, as well as to the judges of the courts, bringing this matter to their attention, and I think there ought to be some more criticism of the bill. I would like to have further criticism of it; I am not attached to any particular thing in it, except that I am attached to these main propositions—one is to give the Supreme Court relief so that it will be enabled to expedite the adjudication of suits; it is absolutely necessary to expedite these cases; and I am attached to the proposition of giving the shipper his

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day in court just as the carriers now have their day in court. I am frank to say that if the committee thinks, looking at the matter in the way that has been suggested, that there are other classes of cases that might properly be sent to that court, I am perfectly willing to include them in this bill. I do not think there is any urgent necessity for immediate action; the urgent necessity now, in so far as the country is concerned, is to have the Commerce Court continued by making an appropriation for its support.

Let me call the attention of the committee to this point: This statement has been made by a member of the commission to me, not in privacy, but in the presence of half a dozen others——

Mr. WEBB. What commission; the Interstate Commerce Commission?

Mr. BROUSSARD. Yes, sir; the Interstate Commerce Commission: that it has required the commission at least three years of struggle to locate the jurisdiction of the court and its own powers, and that if any hasty action is taken, such as the abolition of this court and the transference of its jurisdiction to the eighty-odd district courts in the country, even though they should be maintained in their jurisdiction throughout, that the same questions as to the jurisdiction of the commission will again arise, and that they will be struggling three years more trying to locate their jurisdiction, which they have now done, and, instead of having their minds directed to the great questions in regard to transportation and the great work they have undertaken as to the physical valuation of railroad properties, they will be for three years hampered with jurisdictional matters.

I merely make that statement to show you how important it is that the best legal minds of Congress should deal with this question carefully. It should not be a party matter; it is not a party question; it is a broad question of dealing out fairness and justice to all classes of people in this big Republic in the problems which are new to us.

I do not think there should be any legislation at this session, and I am trying simply to provoke discussion of this bill—that is, let the business organizations, magazines, and newspapers take it up. The Washington Post the day before yesterday had an editorial upon this bill, which doubtless you have seen. The Journal of Commerce Bulletin has had several editorials advocating the principles of this bill and my former bill, and so nearly the whole press of the country is looking into it. What I think we should do is to wait until the next session of Congress, when there will be plenty of time, when this committee can get together as a whole and consider all the questions involved in this proposition.

Mr. WEBB. Before adjourning, I wish to place in the record certain telegrams, communications, and arguments concerning the bill now under consideration.

(The letters and arguments referred to by Mr. Webb follow:)

ST. LOUIS, MO., *June 17, 1913.*

Hon. H. D. CLAYTON,
Chairman House Judiciary Committee, Washington, D. C.:

Understand hearing on Broussard bill, H. R. 5902, will be held to-morrow. As representing 2,000 or more active business men, members of this league, we respectfully urge that jurisdiction of Commerce Court may be extended to review negative orders of the Interstate Commerce Commission, so that both shippers and carriers may have equal opportunity of appeal.

P. W. COYLE,
Traffic Commissioner Business Men's League of St. Louis.

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KANSAS CITY, MO., *June 17, 1913.*

H. D. CLAYTON,
Chairman House Judiciary Committee, Washington, D. C.:

We respectfully urge your favorable support of Broussard bill, H. R. 5902, as this measure will give opportunity for appeal from negative decisions on Interstate Commerce Commission by shippers who may desire to test any error of law made by that commission.

W. R. PICKERING LUMBER CO.

ST. LOUIS, MO., *June 19, 1913.*

Hon. H. D. CLAYTON,
Chairman House Judiciary Committee, Washington, D. C.:

We deem it of highest importance and in justice to the interests of the large shipping public that Broussard bill, H. R. 5902, be enacted into law.

We therefore respectfully urge your indorsement of the measure and also your favorable effort in behalf of continuance of the Commerce Court.

FROST JOHNSON LUMBER CO.

ST. LOUIS, MO., *June 17, 1913.*

Hon. H. D. CLAYTON,
Chairman Judiciary Committee, House of Representatives,
Washington, D. C.:

Understand your committee considers to-day H. R. 5902, providing that Commerce Court reviews negative orders I. C. C. We have been victims of injustice of present practice, and unless seriously mistaken favorable report on at least this feature of bill will correct existing serious injustice to shippers.

LOUIS WEBNER SAWMILL CO.

KANSAS CITY, MO., *June 17, 1913.*

HENRY D. CLAYTON,
Chairman House Judiciary Committee, Washington, D. C.:

We are advised that Broussard bill No. 5902 will come before your committee on 18th for final consideration. We respectfully request that this bill receive favorable attention at the hands of yourself and committee. The Commercial Club has indorsed the bill. Are confident we are expressing the wish of the large majority of shippers and receivers of freight in this entire community.

THE COMMERCIAL CLUB,
E. M. CLENDENING, *General Secretary.*

ST. LOUIS, MO., *June 17, 1913.*

H. D. CLAYTON,
Chairman House Judiciary Committee, Washington, D. C.:

Understand at your committee meeting to-morrow matter in regard to Broussard's bill (H. R. 5902) will be brought up for discussion. Hope you will act favorably on this bill, as we believe scope of Commerce Court should be enlarged and shippers given same privileges as railroads have before this court. Believe all shippers, especially in lumber interests, favor the court.

THOS. C. WHITEMARSH.

KANSAS CITY, MO., *June 16, 1913.*

Hon. H. D. CLAYTON,
Chairman House Judiciary Committee, Washington, D. C.:

I am advised that Broussard bill (H. R. 5902), which gives jurisdiction to Commerce Court to review negative orders of Interstate Commerce Commission, will come up for hearing before your committee at an early date. I was chairman of committee that worked for this particular legislation last summer, and was represented by Luther M. Walter, who appeared before your committee in connection with the Borland bill. The Broussard bill, in my opinion, fully covers the situation, and it is earnestly hoped that your committee will conclude to report same favorably.

R. S. DAVIS.

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KANSAS CITY, MO., *June 17, 1913.*

Hon. H. D. CLAYTON,
Chairman Judiciary Committee,
House of Representatives, Washington, D. C.:

We respectfully urge the favorable consideration by you and your committee of Broussard bill (H. R. 5902).

W. R. PICKERING.
W. A. PICKERING.

KANSAS CITY, MO., *June 16, 1913.*

MR. HENRY D. CLAYTON,
Chairman House Judiciary Committee, Washington, D. C.:

Understand Representative Broussard's bill, No. 5902, comes before your committee on the 18th for final consideration. Our attorney, Mr. Luther M. Walters, will appear to speak for us and the other interests he represents. In urging that this bill receive favorable attention at your hands are confident we are expressing the wish of the large majority of shippers and receivers of freight in this entire country.

CENTRAL COAL & COKE CO.,
CHAS. S. KEITH, *President.*

CHICAGO, ILL., *June 17, 1913.*

Hon. HENRY D. CLAYTON,
Chairman Committee on the Judiciary, Washington, D. C.:

The board of directors of the National Business League of America, with members and representatives in more than 150 cities covering nearly every State in the Union, declare for the perpetuity of the Commerce Court of the United States and extension of its jurisdiction to include a review of all questions of law decided by the Interstate Commerce Commission as a matter of equity to all concerned.

GEO. W. SHELDON, *President.*
AUSTIN A. BURNHAM, *General Secretary.*

NEW YORK PRODUCE EXCHANGE,
New York, June 17, 1913.

Hon. HENRY D. CLAYTON,
Chairman of the Judiciary Committee,
House of Representatives, Washington, D. C.

DEAR SIR: The following is a copy of preamble and resolution adopted at a meeting of the board of managers of the New York Produce Exchange held August 1, 1912:

Whereas under a recent ruling of the Supreme Court that the Commerce Court has no jurisdiction to review an order of the Interstate Commerce Commission which dismisses a complaint by the shipper, thus providing for the railroad a course of appeal which is not open to the shipper, resulting in an undue advantage to said railroad;

Whereas there is now pending in Congress a bill known as H. R. 25572, Sixty-second Congress, "To amend the act entitled 'An act to codify, revise, and amend the laws relating to the judiciary,' approved March 3, 1911, and for other purposes," which House resolution is designed to extend to the shipper the right of appeal to the Commerce Court from decisions of the Interstate Commerce Commission: Be it

Resolved, That the board of managers of the New York Produce Exchange hereby expresses itself in favor of H. R. 25572, and earnestly urges its enactment into law.

Yours, very truly, L. B. HOWE, *Secretary.*

LAW OFFICE OF WIMBISH & ELLIS,
ATLANTA, GA., *June 16, 1913.*

Hon. H. D. CLAYTON,
Chairman House Judiciary Committee,
House of Representatives, Washington, D. C.

DEAR SIR: As a practitioner of long experience, representing shippers and the public before the Interstate Commerce Commission and the courts, I am thor-

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oughly convinced of the urgent necessity of continuing the work of the Commerce Court, unless and until some better substitute can be found. Perhaps a free interchangeability of Commerce Court judges with other circuit court judges would relieve much of the objection now urged against the court. In my opinion it would be a great misfortune to throw the jurisdiction now exercised by that court back to the district courts, and in such event I think the shipper would suffer the greater hardship.

I do not favor conferring upon the court jurisdiction to review negative orders of the Interstate Commerce Commission. In my opinion this would weaken the power of the commission as an administrative body and tend to convert it into an inferior judicial tribunal. If the shippers may have a court review of merely negative orders of the commission, which involve no constitutional question, the carriers would seem to be entitled to a similar right of review in practically every case in which they disagreed with the conclusion and order of the commission.

I have other objections to the Broussard bill (H. R. 5902) which I may desire to submit to your committee.

Very truly, yours,

WILLIAM A. WIMBISH.

THE NATIONAL HAY ASSOCIATION (INC.),
Birmingham, Ala., June 16, 1913.

Hon. H. D. CLAYTON,
Chairman House Judiciary Committee, Washington, D. C.

DEAR SIR: I understand that a question regarding retention of the Commerce Court will be considered by your committee in the next few days.

At the last annual meeting of the National Hay Association, in Kansas City, July 16, 1912, the association was committed to support the retention of the Commerce Court with enlarged jurisdiction to review cases when decided by the Interstate Commerce Commission adversely to the complainant as well as cases decided adversely to the defendant.

Representing the National Hay Association, I feel it my duty to lay before your committee the ideas of our members on this important question.

Thanking you for any consideration which may be extended us in this matter,

Very truly, yours,

E. WILKINSON,
President.

RAILROAD COMMISSION, STATE OF FLORIDA,
Tallahassee, June 19, 1913.

Hon. HENRY D. CLAYTON,
House of Representatives, Washington, D. C.

DEAR SIR: I understand that there will be a committee hearing on the 21st instant on the question of the continuance of the Commerce Court. I had hoped to appear before your committee, but I can not be in Washington at that time.

I wish to express myself in favor of the continuance of the Commerce Court. Doubtless there are no arguments that I can advance which have not already been presented, so I shall content myself with expressing my sentiments.

Since the establishment of that court the railroad commissioners of Florida have had opportunity to test its efficiency in one important case involving interstate rates on Florida railroads. The case was decided by the Interstate Commerce Commission in November. A petition was filed in the Commerce Court in January; the case was submitted on final hearing in that court in June following, and was decided the next October. It was immediately taken to the United States Supreme Court, and in the following January (1913) was submitted in that court. If we had been traveling under the old procedure in our local Federal courts it is questionable whether we would have by this time arrived at a final hearing in the lower court. It is true that under the new Federal court rules, cases will be expedited to some extent, but I am persuaded we shall not yet have any such expeditious procedure as was had in the case I have mentioned.

Expedition in these matters is not, in my opinion, due to rules or statutes affecting procedure so much as to the fact that the Commerce Court is dealing with cases of kindred nature and can concentrate their work in such manner as to promptly dispose of them. In other words, the members of that court must become specialists, even if they are not such when they go on the Commerce Court bench.

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The only serious difficulty as to the Commerce Court has reference to the personnel of the court; but that difficulty is no more serious with reference to that particular court than it is with reference to the district courts generally.

If it is possible by any change of the law to be assured of any method of designating the judges which would give more general satisfaction than the present method, it might be possible thereby to satisfy some of the opposition to the court.

When the question of abolishing this court was first broached in Congress, I expressed myself in favor of the bill. But subsequent developments have convinced me that that was not the correct remedy for the ills which then appeared.

I believe that it is also proposed to give the Commerce Court additional jurisdiction, so as to permit a review of negative rulings of the Interstate Commerce Commission. I do not favor this proposed extension of their jurisdiction. It appears to me that it will inevitably result in making that court merely a superior commission, a result which is by all means to be avoided, in my judgment.

Respectfully submitted.

F. M. HUDSON, *Counsel.*

GEORGIA-FLORIDA SAWMILL ASSOCIATION (INC.),
Jacksonville, Fla., June 18, 1913.

Hon. H. D. CLAYTON,
Chairman House Judiciary Committee, Washington, D. C.

MY DEAR SIR: We desire to respectfully protest against the abolishing of the Commerce Court, and we have so advised the Senators and Representatives from both Georgia and Florida, and we trust your committee can see its way clear to give the court its support.

Our association is composed of a large number of shippers of forest products in the States of Georgia, Florida, and Alabama, and the item of transportation is quite a large factor with us. Of course, we are not in politics and don't know anything about the inside facts concerning the Commerce Court, but we do know that it furnishes the shortest possible route to the Supreme Court, where a great many questions that concern us finally lodge. It would be suicidal to return to conditions that prevailed before the Commerce Court was organized and have our transportation questions handled in the various district courts, where they drag along for years. In our humble opinion, it would be much better to enact legislation making the court a more effective tribunal than to abolish it.

Thanking you for your attention to the matter, I beg to remain,

Very respectfully,

CHAS. A. BLAND,
Traffic Manager.

THE MERCHANTS' ASSOCIATION OF NEW YORK,
Woolworth Building, 233 Broadway, June 19, 1913.

Hon. HENRY D. CLAYTON,
Chairman Committee on the Judiciary,
House of Representatives, Washington, D. C.

DEAR SIR: Having been informed that the House Committee on the Judiciary would hold a hearing on the Broussard bill (H. R. 5902), a bill proposing to relieve the Supreme Court and to extend the jurisdiction of the Commerce Court, I appeared before the committee as the representative of the Merchants' Association of New York for the purpose of urging the continuance of the Commerce Court and to discuss the proposed legislation as applicable to the orders of the Interstate Commerce Commission in the administration of the act to regulate commerce. Not having previous knowledge of those provisions contained in bill H. R. 5902, proposing to relieve the Supreme Court and to extend the jurisdiction of the Commerce Court to cases arising in Porto Rico, the Philippine Islands, the Canal Zone, and under the bankruptcy act, I was not prepared to record the views of the Merchants' Association of New York either in the affirmative or negative on those provisions transferring to the jurisdiction of the Commerce Court cases which are now handled in the Supreme Court, as such matter would have to be passed upon by our appropriate committees and the board of directors before formal action can be taken in the name of the association.

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Understanding that to meet an emergency it would be necessary to provide for an appropriation, so as to continue the effectiveness of the Commerce Court after June 30, a telegram was addressed to the Hon. John J. Fitzgerald, chairman of the House Committee on Appropriations, wherein is expressed the views of this association with relation to the continuance of the Commerce Court, a copy of which telegram is herein inserted:

"NEW YORK, *June 4, 1913.*

"Hon. JOHN J. FITZGERALD,
"*House of Representatives, Washington, D. C.:*

"The establishment of the Commerce Court has not only expedited the handling of cases appealed from orders of the Interstate Commerce Commission, but has also insured uniformity of decisions applicable throughout the country. It has removed that uncertainty in which shippers were previously left awaiting long-deferred decisions. The continuance of the court is distinctly in the interest of the great shipping community. We therefore urge the necessary appropriation to continue it in its present form.

"THE MERCHANTS' ASSOCIATION OF NEW YORK,
"By S. C. MEAD, *Secretary.*"

I would respectfully request that this communication be inserted in the printed proceedings as a part of my testimony given before your committee.

Yours, very truly,

THE MERCHANTS' ASSOCIATION OF NEW YORK,
By J. T. LINCOLN, *Manager, Traffic Bureau.*

Thereupon the committee adjourned.

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